SUBJECT INDEX

	Page
Opinions Below	1
Jurisdiction	1
References	2
Statutes Involved	3
Questions Presented	3
Statement of Facts	4
Reasons for Granting the Writ	9
Conclusion	18

INDEX TO APPENDICES

	Page
Appendix A. Reporter's in Chambers Transcript ..... App. p.	1
Appendix B. Contempt Hearing Reporter's Transcript June 3, 1971	16
In the Matter of the Contempt of William T. Farr, Dated June 3, 1971	16
Contempt Hearing Reporter's Transcript June 30, 1971	55
In the Matter of the Contempt of William Farr, Dated Wednesday, June 30, 1971	55
In the Matter of the Contempt of William T. Farr, Dated July 19, 1971	109
Appendix C. Order Re Publicity	163
Declaration of William Farr	167
Appendix D. Findings and Order Adjudging Contempts Committed in the Immediate View and Presence of the Judge; Order of Commitment	173
Appendix E. Order to Show Cause	200
Declaration of Donald K. Byrne	201
Declaration of Robert K. Steinberg	206
Appendix F. Opinion of the Court of Appeal	207
Order Modifying Opinion and Denying Petition for Rehearing	224
Appendix G. Order Modifying Opinion and Denying Petition for Rehearing	225
Appendix H. Hearing Denied	226
Appendix I. Newsman's Refusal to Disclose News Source	227

TABLE OF AUTHORITIES CITED

Cases	Page
Associated Press v. U.S., 326 U.S. 1, 20, 65 Sup. Ct. 416 (1945)	10
Bates v. Little Rock, 361 U.S. 516, 524, 80 Sup. Ct. 412 (1960)	11
Branzburg v. Pound, 402 U.S. 942 (1971), No. 1381	9, 11
Bridges v. California, 314 U.S. 252, 86 L.Ed. 192 (1941)	15, 16
Craig v. Harney, 331 U.S. 367, 91 L.Ed. 1546 (1947)	15
Degregory v. Attorney General of New Hampshire, 383 U.S. 825, 829, 86 Sup. Ct. 1148 (1966)	11
Gibson v. Florida Legislative Investment Committee, 372 U.S. 539, 546, 83 Sup. Ct. 880 (1963)	10, 11
Henry v. Mississippi, 379 U.S. L.Ed.2d 408	18
Johnson v. Mississippi, 403 U.S. 212, 29 L.Ed.2d 423 (1971)	17
Jones v. Alfred H. Mayer Company, 392 U.S. 409, 20 L.Ed.2d 1189 (1968)	15
Lamont v. Postmaster General, 381 U.S. 301, 85 Sup. Ct. 1493 (1965)	10
Louisiana Ex rel. Gremillion v. NAACP, 366 U.S. 293, 296-297, 81 Sup. Ct. 1333 (1961)	11
Martin v. City of Struther, 319 U.S. 141, 63 Sup. Ct. 862 (1943)	10
Mayberry v. Pennsylvania, 400 U.S. 455, 27 L.Ed. 2d 532 (1971)	17
New York Times v. United States, 403 U.S. 713, 29 L.Ed.2d 822 (1971)	16

Page

Organization for a Better Austin v. Keefe, 402 U.S. 415, 29 L.Ed.2d 1 (1971) 16

Pappas, In re, 402 U.S. 942 (1971), No. 1434 ....9, 11

Pennekemp v. Florida, 328 U.S. 331, 90 L.Ed. 1295 (1946) 15

Sweezy v. New Hampshire, 354 U.S. 234, 245, 77 Sup. Ct. 1203 (1957) 18

United States v. Caldwell, 402 U.S. 942 (1971), No. 1114 .....9, 11

United States v. Carolene Products Company, 304 U.S. 144, 152, 82 L.Ed. 1234, 1241 (1938) 15

Woods v. Georgia, 370 U.S. 375, 8 L.Ed.2d 569 16

Statutes

California Evidence Code, Sec. 1070 .....3, 6, 7, 8, 10, 13, 14

United States Code, Title 28, Sec. 1257(3) 1

United States Constitution, First Amendment 3, 4, 8, 10, 11, 13, 14, 15, 18

United States Constitution, Fourteenth Amendment 3, 4

IN THE

Supreme Court of the United States

October Term, 1971
No. 71-.....

WILLIAM T. FARR,

Petitioner,

vs.

SUPERIOR COURT OF LOS ANGELES COUNTY,

Respondent.

Petition for a Writ of Certiorari to the District Court of Appeal, Second Judicial District, Division One.

Petitioner, William T. Farr, prays that a Writ of Certiorari issue to review the judgment of the California Court of Appeal.

Opinions Below.

The opinion of the Court of Appeal, Second Appellate District, is officially reported and published in 22 Cal. App. 3d 60, December 17, 1971. A certified copy of this opinion is contained in Appendix "F". An Order Modifying Opinion and Denying Petition for Rehearing is contained in Appendix "G". A Petition for Hearing was denied by the California Supreme Court on March 20, 1972, a certified copy of that denial of hearing is contained in Appendix "H".

Jurisdiction.

The jurisdiction of this Court is invoked under and pursuant to 28 U.S. Code, Section 1257(3).

References.

1. The Transcript references, contained herein, are to the Reporter's Transcript in proceedings held in the case of *People v. Manson, et al.*, being Case No. A 253 156, in the Superior Court of the County of Los Angeles, State of California, presided over by the Honorable Charles H. Older. However, the proceedings applicable to the Petitioner herein were reported in four separate stages:

(i) The first proceeding was conducted in chambers and the transcript thereof is contained in Appendix "A", attached hereto and incorporated herein by reference. Said transcript reference will hereinafter be referred to as *In Chambers Tr.*

(ii) The contempt proceedings that thereafter ensued were separately reported on June 3, June 30 and July 19, 1971. These transcripts are contained in Appendix "B", attached hereto and by reference incorporated herein. Said transcript references will be referred to as *Rep. Tr. and date.*

2. The Order Re Publicity is contained in Appendix "C", attached hereto and by reference incorporated herein.

3. The "Findings and Order Adjudging Contempts Committed in the Immediate View and Presence of the Judge; Order of Commitment; dated July 28, 1971" are hereinafter referred as "Finding", all of which is contained in Appendix "D", attached hereto and incorporated herein by reference.

4. The Order to Show Cause in Re Contempt is contained in Appendix "E", attached hereto and incorporated herein by reference.

5. The aforementioned District Court of Appeal's Opinion is contained in Appendix "F", attached hereto and incorporated herein by reference.

6. The Order Modifying said Opinion is contained in Appendix "G", attached hereto and incorporated herein by reference.

7. Certified copy of a denial of hearing by the California Supreme Court is contained in Appendix "H", attached hereto and by reference incorporated herein.

8. The text of California Evidence Code Section 1070, is contained in Appendix "I", attached hereto and by reference incorporated herein.

Statutes Involved.

California Evidence Code, Section 1070, is contained in Appendix I, attached hereto and by reference incorporated herein.

Questions Presented.

I

Are a newspaper reporter's sources of information protected from compulsory disclosure by the provisions of the First and Fourteenth Amendments to the United States Constitution absent a clear showing of compelling and overriding national interest that cannot be served by any other alternative means?

II

Was the prior judicial order prohibiting speech in publication respecting the pending judicial proceedings and upon which the contempt citation herein involved was predicated, a prior restraint upon and in violation

of First Amendment rights, there being no showing that the same was indispensable to the conduct of a fair trial?

III

Was there a violation of the defendant's rights under the Fourteenth Amendment by virtue of the fact that the contempt hearings were held and the findings adjudicated by the same judge who presided over the trial for which the Order Re Publicity was made, who conducted, during the trial, an unsuccessful interrogation of petitioner concerning the same matters for which his contempt was adjudged, who some fifty days after judgment again summoned him to appear, and who, then, found his contempt for continuing to refuse to disclose the source of the information that formed the basis of his article.

Statement of Facts.

On December 10, 1969, early in the proceedings of the case of *People v. Manson et al.*, being case No. 253 156, in the Superior Court of the County of Los Angeles, State of California, presided over by the Honorable Charles H. Older, an Order Re Publicity was signed by the Honorable William B. Keene, Judge of the Superior Court, and remained in effect throughout the trial. It is conceded that petitioner was not a person subject to this order.

On October 5, 1970, during the course of the trial, one of the prosecuting attorneys obtained a written statement from Virginia Graham, a potential witness. At the court's instruction, copies of this statement were delivered to each of the attorneys of record in the matter and one to the trial court. [Findings, p. 2, lines 12-22.]

On October 7, 1970, petitioner, who was then a reporter for the Los Angeles Herald Examiner, a daily newspaper, and who had for several months been engaged in an effort to acquire information in possession of Miss Graham after promising to keep confidential the identity of his source, received two copies of this statement, each from an attorney of record in the *Manson* case. [Rep. Tr., July 19, 1971, p. 13, lines 26-32, p. 14, lines 1-9.] After making the same promise, petitioner obtained another copy on October 8, 1970 from another person subject to the Order Re Publicity, not an attorney of record. [Rep. Tr., July 19, 1971, p. 9, line 11, to p. 10, line 12.]

On October 8, 1970, after being apprised by Miss Graham's attorney that petitioner had been given a copy of the statement, Judge Older conducted an in-chambers hearing to ascertain if, in fact, this was true and, if so, the identity of the persons who had given this material to Mr. Farr and what he intended to do with the same. [In Chambers Tr., p. 2, lines 4-11.] Petitioner at that time advised the court that he wanted to cooperate [In Chambers Tr., p. 2, line 20] and acknowledged that he had statements from Miss Graham that were the product of "several months project on our part . . ." [In Chambers Tr., p. 7, lines 9-10.] He also testified that during the course of his investigation he had obtained transcripts of the statements Miss Graham had given the District Attorney; that he had received the same from two of the six attorneys of record in the *Manson* case and one from another individual who was subject to the Order Re Publicity, not an attorney. When asked what he had intended to do with the information contained in this statement, he replied that he did not have control over that [In Cham-

bers Tr., p. 5, lines 10 and 11] and advised the court that this was a decision that was to be made by his City Editor. [In Chambers Tr., p. 5.]

The petitioner respectfully refused to disclose the identity of the sources of this statement, asserting that the same was privileged and that he had an immunity from contempt for nondisclosure by virtue of the California Evidence Code Section 1070. [Rep. Tr., June 30, 1971, p. 5, lines 5-12.] No further proceedings were held at that time.

After submitting his story to his newspaper which contained, along with other material, information that he acquired by virtue of the statement, the article was published by the Herald Examiner on October 9, 1970. [Rep. Tr., June 3, 1971, p. 8, lines 8-17.]

After judgment in the *Manson* case, and on May 5, 1971, Judge Older executed an Order to Show Cause, commanding petitioner to "show cause why he should not be compelled to disclose which person or persons released to him the transcript of the statement of Virginia Graham made on or about October 8, 1970." This Order to Show Cause and Declaration in Support Thereof are contained in Appendix "E" hereto. Hearing on this matter was convened on May 19, 1971, by which time petitioner had terminated his position with the newspaper, having accepted employment as press secretary to the Los Angeles County District Attorney. Being called as a witness at such hearing, petitioner stated that he had obtained copies of the Graham statement from two of the attorneys of record in the

Manson trial and identified the group to which those two belonged as Mr. Bugliosi, Mr. Musich, Mr. Kay, all Deputy Attorneys; and Mr. Kanarek, Mr. Shinn, and Mr. Fitzgerald, counsel for the various defendants. [Rep. Tr., June 3, 1971, p. 37, line 2, to p. 38, line 25.] Petitioner again, however, asserted his rights under California Evidence Code Section 1070 and the First Amendment again refusing to name the particular individuals from whom he received the information. The trial court then recessed the hearing to permit interrogation of the attorneys of record. Each of such attorneys denied under oath having given a statement to petitioner. [Findings, p. 4, lines 8-13.] The trial court again recessed the hearing to permit interrogation of the attorneys of record. Each of such attorneys denied under oath, having given a statement to petitioner. [Findings, p. 4, lines 8-13.] The trial court again recessed the hearing to permit further questioning of Farr.

During the ensuing interrogation petitioner reiterated his statement, *i.e.*, that during the course of several months' investigation he had gotten the material from two of the attorneys of record and one from another person subject to the Order Re Publicity. He then refused to answer a series of questions asking the identity of the persons who had furnished the statement, the places where he had obtained the same, the attorneys of record approached by him to obtain the statements and to whom he had given a promise of confidentiality, a question asking whether the source of the information was an associate of attorney of record and a ques-

tion asking whether a copy of the statement had been obtained from the office of the District Attorney. Petitioner justified his refusal to answer each of the aforementioned points of inquiry by again referring to California Evidence Code Section 1070 and the First Amendment to the United States Constitution. [Findings, p. 7, line 6, to p. 16, line 22.]

In each instance of refusal to answer the court ordered an answer on penalty of contempt. [Findings 12, pp. 7-16.] After further refusal the court held Petitioner to be in direct contempt and ordered him incarcerated until he answered the questions. [Findings, p. 25, lines 9-13.] A stay was issued to permit Mr. Farr to pursue review of this order.

Petitioner herein then petitioned for a Writ of Review in the Court of Appeal, Second Appellate District, Division 1. Said court granted an alternative writ and after oral argument and submission filed its decision on December 17, 1971. A petition for modification and for rehearing was timely filed in said court, after considering said petition, on January 12, 1972, the Court filed its "Order Modifying Opinion and Denying Petition for Rehearing." Petitioner then timely petitioned the California Supreme Court for Hearing. Said petition was denied on March 20, 1972.

REASONS FOR GRANTING THE WRIT.

I.

It is respectfully submitted that this case presents, on its undisputed facts, perhaps the most fundamental inquiry yet made available to this Court into the nature and extent of the privilege of confidentiality that must be provided a journalist so as to secure to the public their first amendment right to be informed.

Certiorari having been granted in *United States v. Caldwell*, 402 U.S. 942 (1971), No. 1114; *In re Pappas*, 402 U.S. 942 (1971), No. 1434; *Branzburg v. Pound*, 402 U.S. 942 (1971), No. 1381, petitioner is not unmindful of the court's concern in this area and asserts that in weighing the competing interests at stake under the circumstances herein shown, an even greater and more compelling reason is provided for review into a matter which arose out of a judicially launched investigation into alleged violations of a speech restraining order.

Unlike Mr. Caldwell, Mr. Branzburg and Mr. Pappas, all of whom refused to respond to the subpoena process, petitioner first, on October 8, 1970, at the court's request, voluntarily appeared in an in-chambers proceeding and, again, appeared pursuant to an Order to Show Cause in Re Contempt. In each instance petitioner gave testimony which enabled the court to learn the nature of the material that he had acquired, the group from whom he had obtained the same, and in the first proceeding, the extent of his knowledge as to the use to which such yet unpublished statements might be employed.

Throughout the entire proceeding, both in chambers and those conducted pursuant to the aforementioned Order to Show Cause in Re Contempt, it was only those

questions directed and designed to elicit from petitioner the precise identity of the individuals whose names he promised not to reveal that he declined to answer relying upon California Evidence Code Section 1070 and the First Amendment. It was and is Mr. Farr's position that this section in its essence, though providing an immunity from contempt, conferred a privilege upon certain communications made to newsmen that ultimately provided the foundation for a news story, a policy petitioner contends is mandated by the United States Constitution.

It is axiomatic that if a news gatherer is denied the right to maintain the confidentiality of his sources of information his ability, in turn, to inform the public will be greatly inhibited.

Constitutional protection of the freedom of press "rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public and that a free press is a condition of a free society." *Associated Press v. U.S.*, 326 U.S. 1, 20, 65 S. Ct. 416 (1945). Freedom to gather news is, of course, a factual and constitutional precondition of the freedom of the press to disseminate news, *e.g., Martin v. City of Struther,* 319 U.S. 141, 63 S. Ct. 862 (1943), and the freedom of the public to receive the news. See *Lamont v. Postmaster General,* 381 U.S. 301, 85 S. Ct. 1493 (1965).

A showing of a compelling and overriding national need has consistently been required as the precondition of any governmental invasion into spheres of privacy protected by the First Amendment, whether by way of investigations, *e.g., Gibson v. Florida Legislative In-*

vestment Committee, 372 U.S. 539, 546, 83 S. Ct. 880 (1963); *Degregory v. Attorney General of New Hampshire*, 383 U.S. 825, 829, 86 S. Ct. 1148 (1966), or other methods of compelling disclosures, *e.g.*, *Bates v. Little Rock*, 361 U.S. 516, 524, 80 S. Ct. 412 (1960); *Louisiana Ex rel. Gremillion v. NAACP*, 366 U.S. 293, 296-297, 81 S. Ct. 1333 (1961).

The Government, through our Department of Justice, the District Court and the Court of Appeals in the *Caldwell* case, *supra*, likewise recognized and agreed that the First Amendment guarantee protected a reporter from disclosure of his confidential sources absent a showing of a superior and overriding reason for doing so. In its petition for Certiorari, the United States Government stated:

> "The Department of Justice, as a matter of policy, does not seek confidential information in the absence of an overriding need. It does not arise in this case, since the Government did not appeal from, and does not here contest, the order of the District Court specifically protecting Respondent from disclosure of any professional confidences unless the Government first convinces the Court of its specific need." (Petition for Writ of Certiorari, p. 6.)

In the within matter, there was a complete absence of a showing of "a compelling and overriding national need" for the disclosures sought by the Honorable Charles H. Older in his self-imposed investigation, contrary to the contentions in *Caldwell* and *Pappas* (governmental investigation into revolutionary violence) and in *Branzburg*, *supra* (an investigation into narcotics violations). In fact, Judge Older not only failed

to claim such an overriding need he may be said to have asserted the contrary by advising Petitioner, in the initial in-chambers proceeding, that if he were to call Petitioner to the witness stand,

> "or some one would subpoena you to testify to these matters, you could, of course, assert, or refuse to disclose your news under 1070, which provides that you cannot be adjudged in contempt by a court for refusing to disclose the source of any information procured for publication and published in newspapers. It does not say you cannot be called. The point I am making is this, while I could not order you, that is effectively, order you, to disclose the source, there is nothing to prevent you in the interests of justice and an aid in the administration of justice from voluntarily revealing it without waiving any right in the future to assert that immunity or privilege," [In Chambers Tr., p. 8, lines 7-28],

the assertion of which ultimately resulted in the adjudication of contempt.

At this point in time, the Los Angeles Herald Examiner had not yet published the story that, in part, contained the information confidentially furnished to Petitioner, together with material obtained from independent sources. [Rep. Tr., July 19, 1971, p. 45.] Yet, the Court under the circumstances before it and with all the information at hand made no attempt to enjoin that publication or to even seek an inquiry of the persons subject to the order, if its interest was to seek punishment for its violation. In fact, the Court assured Petitioner that he was under no compulsion to

divulge the identity of the persons who supplied him with the statement, and stated:

> "It is put on a purely voluntary basis. I won't think any less of you or the HERALD EXAMINER or anyone else if you say no . . ."

His interest, as stated in the colloquy that ensued, was to see that those who violated the Order Re Publicity be dealt with. [In Chambers Tr., p. 11, lines 15-23.]

Thereafter, the information requested by the Respondent Court was sought only for investigative purposes to determine, more than seven months after the fact, the identity of the attorneys in the *Manson* case who may have been guilty of a violation of an Order of the Court regarding publicity during trial. No proceedings were ever brought against the attorneys or any other parties subject to the Order Re Publicity, and there was never an attempt to show that prejudice to the prosecution or the defense in the *Manson* case resulted from the alleged acts of any such persons. Such circumstances would seem to fall far short of the compelling and overriding interest necessary to warrant an encroachment on First Amendment liberties.

The argument of District Court of Appeal that the separation of powers concept renders inapplicable to a judicial contempt proceeding Evidence Code Section 1070 which embodies the principle of a privilege is thoroughly destructive of other branches of government, the media, and ultimately, the public.

Are we to say that in the proceedings below Judge Older was presumably also free to interrogate the lawyers, spouses, physicians, psychotherapists, clergymen of the Manson lawyers, unimpeded by the priv-

ileges embodied in the California Evidence Code and the First Amendment.

Among the procedures which the legislature regulates for all proceedings civil or criminal, including contempts, are the rules of Evidence. It is certainly uncontestable that rules of Evidence and constitutional privileges must be followed before a contempt can be punished.

It is, likewise, respectfully suggested that equally as untenable and destructive of First Amendment Rights is the trial court's finding that since petitioner ultimately terminated his employment with the newspaper prior to receiving service of the Order to Show Cause in Re Contempt, the immunities and privileges to which he was entitled while with the newspaper were no longer available to him. It is submitted that the policy behind Section 1070 and the reason for the privilege herein asserted by virtue of the First Amendment is not to aid reporters in earning their livelihood, but rather to enable them to obtain information, not otherwise available, from sources interested in preserving the confidentiality of their disclosure. If, for instance, communications between a lawyer and his client were confidential only during the period of active representation or until the lawyer decided to discontinue his practice, no client could safely confide in his lawyer. Concurrently, no news source could safely confide in a reporter without an absolute guarantee that the newsman would remain in the employ of his newspaper until his death.

Section 1070 is, after all, a statute implementing the constitutional right of free speech and press. Just as statutes restricting First Amendment Rights are consti-

tutionally suspect (*United States v. Carolene Products Company*, 304 U.S. 144, 152, 82 L. Ed. 1234, 1241 (1938), statutes in aid of constitutional rights are to be given their broadest and most liberal construction to which the language is susceptible, *Jones v. Alfred H. Mayer Company*, 392 U.S. 409, 20 L. Ed. 2d 1189 (1968).

II.

The sole justification offered for the interrogation of petitioner which resulted in his contempt adjudication is the Court's self-motivated inquiry into a supposed violation of its Order Re Publicity, restricting the speech of officials, lawyers, trial participants, and certain other individuals respecting the then pending *Manson* proceedings. As has been pointed out, it is conceded that petitioner was not one of the individuals subject to the Order Re Publicity. Nevertheless, Petitioner contends that the underlying restrictive order, which is the predicate of the within proceedings, is void as a prior restraint upon First Amendment rights, there having been no showing whatsoever to satisfy the heavy burden of justifying a speedy restricting decree. Hence, the contempt adjudication cannot stand.

Even in instances where effort has been made to punish representatives of the press for speech respecting pending judicial proceedings, this Court has consistently ruled that unless such proceedings are justified by a showing of a clear and present danger to the administration of justice, attempts to punish such representatives of the press are violative of First Amendment rights. *Bridges v. California*, 314 U.S., 252, 86 L. Ed. 192 (1941); *Pennekemp v. Florida*, 328 U.S. 331, 90 L. Ed. 1295 (1946); *Craig v. Harney*, 331 U.S. 367, 91 L. Ed. 1546 (1947).

The existence of a prior judicial order banning the speech in question does not in any respect lessen this requirement, since the order is a prior restraint upon speech. As was illustrated by the recent "Pentagon Papers" case, such a prior restraint upon speech must fall unless the government satisfies "the heavy burden" of showing justification for the imposition of such a restraint. *New York Times v. United States,* 403 U.S. 713, 29 L. Ed. 2d 822 (1971); *Organization for a Better Austin v. Keefe,* 402 U.S. 415, 29 L. Ed. 2d 1 (1971).

The jury in the *Manson* case had been sequestered and, thus, had no knowledge or information respecting the newspaper article in question, nor was there any showing in the trial court purporting to justify the restrictive order. It is submitted that this record must be compared with the requirements of proof spelled out in *Woods v. Georgia,* 370 U.S. 375, 8 L. Ed. 2d 569 (a case following and applying *Bridges v. California, supra*),

> "the prosecution called no witnesses to show that the functioning of the jury was in any way disturbed; no showing was made that the members of the Grand Jury, upon reading the petitioner's comments in the newspapers, felt unable or unwilling to complete their assigned task because petitioner interfered with its completion. There is nothing in the record to indicate that the investigation was not ultimately successful, or if it was not, that the petitioner's conduct was responsible for its failure . . ."

III.

The record discloses that a single Judge, upon learning from one of the prosecuting attorneys that another attorney had apparently provided Petitioner with a copy of a witness's statement, conducted an inquiry to ascertain the name of the person or persons who furnished the information to him, took no steps to prevent its use through publication, or to inquire of the individuals subject to the Order Re Publicity concerning the disclosures, acknowledged that the reporter had a privilege of non-disclosure and was subject to a grant of immunity and, months later, after trial was completed, again summoned this individual before him and then adjudged him to be in contempt for his refusal to violate the confidences with which he had been reposed. Thus, for all intents and purposes, Judge Older was the prosecutor, complaining witness and the trial judge.

This Court has made it abundantly clear that contempt hearings, in order to satisfy the constitutional requisites of due process, must be heard before a judge other than the prosecuting judge, unless an emergency situation pertaining to proceedings immediately pending, requires an instant citation and adjudication. This principle was articulated in *Mayberry v. Pennsylvania,* 400 U.S. 455, 27 L. Ed. 2d 532 (1971), and *Johnson v. Mississippi,* 403 U.S. 212, 29 L. Ed. 2d 423 (1971).

In both cases trial judges delayed contempt adjudications and the contempt convictions were reversed since, under such circumstances, another "wholly dis-

interested judge" must hear the contempt citation. It is clear that no "emergency situation" was here involved.

While this issue was raised to the California Court of Appeals, it was brushed aside by a footnote reciting that "no objection on that ground was tendered in the trial court." (Opinion, p. 11, Fn. 2.) Petitioner contends that where a constitutional right affecting the fundamental fairness of a trial was at stake it will not be held to be "waived" absent a strong and compelling showing of intentional, informed waiver. *Henry v. Mississippi*, 379 U.S. ...., 13 L. Ed. 2d 408.

Conclusion.

The concepts expressed by the trial court and the Court of Appeal Opinion represent a strained effort to justify the adjudication and affirmation of this finding of contempt rather than an attempt to determine if the adjudication was so indispensable to the administration of justice, under the particular circumstances, so as to justify the abrogation of the First Amendment to the United States Constitution.

> "It is particularly important that the exercise of the power of compulsory process be carefully circumscribed when the investigative process tends to impinge upon such highly sensitive areas as freedom of speech or press, freedom of political association, and freedom of communication of ideas . . ."
>
> *Sweezy v. New Hampshire*, 354 U.S. 234, 245, 77 S. Ct. 1203 (1957).

Based on the foregoing authorities and arguments, it is respectfully urged that this Court issue its Writ of Certiorari to review the judgment of the California Court of Appeal.

Respectfully submitted,

MARK HURWITZ,
Attorney for Petitioner.

Of Counsel:
F. LEE BAILEY,
BAILEY, ALCH & GILLIS,

APPENDIX "A".

Reporter's in Chambers Transcript.

Superior Court of the State of California, for the County of Los Angeles.

Department No. 104.

Hon. Charles H. Older, Judge.

The People of the State of California, Plaintiff, vs. Charles Manson, Susan Atkins, Leslie Van Houten, Patricia Krenwinkel, Defendants. No. A253156.

REPORTERS' DAILY TRANSCRIPT

APPEARANCES:

For the People: Aaron H. Stovitz and Vincent T. Bugliosi, Deputy District Attorneys.

For Deft. Manson: I. A. Kanarek, Esq.

For Deft. Atkins: Daye Shinn, Esq.

For Deft. Van Houten: Ira K. Reiner, Esq.

For Deft. Krenwinkel: Paul Fitzgerald, Esq.

Joseph B. Hollombe, CSR, Murray Mehlman, CSR., Official Reporters.

THE COURT: Do any of you know Mr. Farr personally?

MR. FITZGERALD: I know Farr. We all know Farr. Every one of us knows Farr.

THE COURT: I met him, too. I don't know him personally excepting I was introduced to him once.

He might be invited informally to come in.

MR. FITZGERALD: I will be happy to invite him.

THE COURT: If you will.

MR. FITZGERALD: May I do so?

THE COURT: Yes, you certainly may.

MR. FITZGERALD: I will informally invite him. I will tell him he is under no compulsion.

(Whereupon, Mr. Fitzgerald leaves the room during which time an off-the-record discussion was had following which Mr. Fitzgerald returned and the following proceedings were had:)

MR. FITZGERALD: Your Honor, this is William Farr.

THE COURT: Mr. Farr, how are you. Sit here in a comfortable chair, as long as we are going to ask you a couple of questions.

The record will show all counsel are present and Mr. William Farr of the Los Angeles Herald Examiner is present.

THE COURT: First of all, Mr. Farr, I invited you in here informally. You are under no compulsion to say anything or to stay if you don't want to, and if you have [1] any doubts in your mind as to whether or not you should stay or say anything, or whether or not you should seek legal advice or whatever, you can just indicate.

The reason that I asked you to come in was because I was informed this morning at the bench by Mr. Robert Steinberg who is one of the attorneys for Virginia Graham, that he had been informed by you that yesterday sometime you had been handed or furnished in some way by one of the defense counsel in this case with a copy of a statement of Virginia Graham relating to her conversations with Susan Atkins.

I asked him, "Well, who was it?"

I forgot what he said. He did not know or he wouldn't say, one or the other.

And in discussing this with counsel, this suggestion came up, asking you to come in, and if you feel you are in a position to reveal who it was, fine.

If you have misgivings about it, that is something else.

MR. FARR: Because I do want to cooperate, I might make it a point in the conversation, where I might ask to talk to both my superiors and my lawyer.

Without waiving any later position, my position under 1070 of the Evidence Code, I would like to clarify —Mr. Steinberg might have read into my statement, and may have decided it was defense counsel, or whichever side. [2]

I did state to him I had a copy of that statement. It is not correct to say precisely that I had received it from defense counsel.

As to from whom I received it, I would invoke Section 1070. I think maybe the company would not want me to discuss it this far, but I think for the sake of time, because I think we are all concerned about the length of the trial, my conversation with Mr. Steinberg dealt with the fact that he apparently had talked to you in regard to some conversations that I had had with Virginia Graham.

THE COURT: He did not talk to me.

MR. FARR: Well, he came in a week ago Friday to say that there had been some approaches made.

I want to clarify what those are, so there is no misunderstanding.

There had been some discussions with Mrs. Graham on matters we rightly or wrongly felt were not in the gag rule. We felt it would never be testified to in the trial.

I am aware I am not a lawyer, and I may have been making assumptions as to what was admissible or not.

I was concerned, frankly. We have a girl who was on parole. I don't want harm done to her because I don't think there has been any abrogation on her part.

What we would like to do is interview her afterwards, and our conversations with Miss Graham have [3] been generally along that line.

It is my understanding that her concept of the gag rule is that it applies as much after she finishes testifying as not.

I only mention this because this led up to our conversation with Mr. Steinberg that I had an independent source to rely on, if worse came to worse.

That is how it came about. I don't think I am telling any tales out of school. I thought Mr. Steinberg had approached regarding the problem of interviews.

THE COURT: I have had no conversations with Mr. Steinberg except the one this morning, where he told me what I relayed to you.

Can you tell us whether or not you received this copy of her statement from any attorney connected with this case?

Can you go that far or not? [4]

MR. FARR: I'd better invoke Section 1070 there.

THE COURT: Well, then, of course the important question is what, if anything, do you intend to do with this statement? That is really the important point so far as I am concerned.

If there has been a violation by some attorney, that is also important; but that is a collateral matter.

But what is done with the statement itself is something entirely different.

MR. FARR: First of all, I don't have total control over that. I don't want to be evasive, and I don't want to deceive the Court. But I had a lengthy conversation with my city editor this morning, because I would like very much to do a story on some matters that will not get in her testimony, at the termination of Mrs. Graham's testimony, certainly with your point of view that the gag order—there is some question as to whether that would be precluded.

I was basing my feeling that it could be on the premise that Linda Kasabian, for instance, held a press conference subsequent to testifying, granted, within some restraints as to what she said.

Not being a lawyer, I base my interpretation on what could be done, I predicated it on that factor.

Now, my office is aware that I have that statement. The decision won't be made until late this [5] afternoon as to whether we will do anything at all, and whether we will do it at a time before they finish her testimony.

Maybe I shouldn't say because I honestly don't know, and the decision is not mine. It is my feeling we will do something which will go beyond what the testimony will be in court.

But I don't know, and that decision won't be made until late this afternoon. I have to go to another meeting, your Honor, shortly after 4:00, or as soon as I can get there after these proceedings.

I will inform them, if that will help at all, and I told the city editor that I might in fact be confronted with a situation where the Court might want to know.

As to whether they would follow my advice or whether they in fact would follow your dictate remains an open question I think.

THE COURT: Well, now, from the proceedings this morning, you probably gathered that the Court is considering permitting the witness to testify as to an edited version of the statement, so as to delete certain things that she in fact alleges to have occurred in her conversation with Susan Atkins.

There is a so-called edited version of her statement that was prepared by the prosecution which does not refer to any of the co-defendants. [6]

Now, can you tell me whether the statement that you have refers to the co-defendants, or does not refer to the co-defendants?

MR. FARR: It does refer to the co-defendants. I think it is a statement—and you are asking me questions as if the statement were singular—once again, I don't want to mislead or lie directly. I am saying that there is more than one statement in my possession.

The statements go back some time, very frankly it's a matter of several months' project on our part, and I think I can say this, my own attitude would be, my own approach to this whole thing—I would not be approaching a witness in this way, or the problem in this way, if the jury were not sequestered.

I think the attitude of the paper—they will make a decision predicated on the fact that the jury is sequestered.

MR. KAY: The problem is we still have Mr. Watson to try. I think that is really what the Court is mainly concerned with.

MR. FARR: I would like to cover that in Lake Tahoe anyway.

THE COURT: I am concerned about all aspects of it.

Of course our jury is sequestered. Mr. Watson is not yet on trial so that is not the problem.

MR. FARR: Also, further on the issue as to whether [7] it refers to others, I think by implication, I think it goes beyond—what we use would go beyond Susan Atkins.

I think we probably would not go into our initial story regarding that statement—we probably would steer away from the portion of what we think might ultimately be her testimony in court.

THE COURT: Another aspect, Mr. Farr, if I were to call you to the witness stand, for example, or someone would subpoena you to testify to these matters, you could of course assert, or refuse to disclose your news under 1070, which provides that you cannot be adjudged in contempt by a court for refusing to disclose the source of any information procured for publication and published in newspapers.

It does not say you cannot be called.

The point I'm making is this, while I could not order you, that is, effectively order you to disclose the source, there is nothing to prevent you in the interest of justice and in aid of the administration of justice from voluntarily revealing it without waiving any right in the future to assert that immunity or privilege. [8]

MR. FARR: That is a question on which I will have to confer.

THE COURT: I realize that. I am not asking you to answer it now.

MR. FARR: I realize there is a separate question.

THE COURT: But let's for the record, I am now asking you if you will voluntarily reveal it, and you can defer your answer if you like, or not answer at all if you like.

MR. FARR: Respectfully, I would like to defer the answer because I feel it probably will be something that the company prefer that I ask the company attorneys.

I know of my own inclination, even in this instance where one's own viewpoint is involved, I am acting as an agent of the company.

THE COURT: I understand that. Well, I don't have anything further that I would like to ask you.

MR. FITZGERALD: I do, I have one question.

So the record might be clear, Mr. Farr, are you saying that in addition to being supplied with one or more typewritten versions of statements of Virginia Graham, you have also had interviews or conversations personally with Virginia Graham in respect to what is contained within those statements, or the same subject matter as contained within those statements?

MR. FARR: That is a compound question, Mr. Fitzgerald.

MR. FITZGERALD: It is, it is. You can answer it any [9] way you like.

THE COURT: I will sustain the objection.

MR. FARR: Can I just answer it in any form?

MR. FITZGERALD: Certainly, any way you want to answer it, you can.

MR. FARR: I think there is a problem in the terminology of the word interview. I don't want to answer the question if there is a legal definition.

We have had conversations. There is no question about that.

In answer to your question as to whether it is on the same information part of what we have discussed is in that statement. There is no question about it. Not

in its entirety, but the statement would be encompassed within our conversations.

MR. FITZGERALD: I have nothing further.

MR. KANAREK: Is it a fair statement that neither Mr. Hughes, Mr. Fitzgerald, myself, or Mr. Shinn gave you the statements?

MR. FARR: That is just the kind of question I don't want to answer.

THE COURT: All right, you don't have to answer that.

MR. FARR: We can go one by one, and I would take 1070. It is also possible there are some ancillary attorneys involved. [10]

I don't want to somehow by deletion have some inference drawn so that I would invoke—so that I don't want it to appear that I am protecting these four, or if the questions were asked by the prosecution attorneys.

I think it is unfair to ask it in that limited fashion. It may not be unfair, I just don't want to answer it.

THE COURT: I will ask you, Mr. Farr, would you let me know one way or the other as soon as you can whether or not you and your employer are willing to voluntarily divulge the identity of the person or persons who supplied you with these statements.

MR. FARR: I would try to do that, your Honor, by mid-afternoon recess.

THE COURT: And I assure you that there is no compulsion whatever to do it.

It is put on a purely voluntary basis. I won't think any the less of you or the Herald Examiner or anyone else if you say no.

On the other hand, I think it would be something constructive, because I think it is important that a de-

liberate and wilful violation of any lawful court order be dealt with.

That is the reason I am asking you, not out of idle curiosity.

MR. FARR: Certainly, in an abstract way I would have to [11] say I concur.

As a matter of practical application, many times the press—I am not certain, in an abstract way my own viewpoint might be in contradistinction to the company's. If they said go ahead, I still might refuse, I am undecided. [12]

MR. KANAREK: May I have the Code Section your Honor is looking at?

THE COURT: 1070 of the Evidence Code.

MR. KANAREK: May I have it just a moment, your Honor.

THE COURT: Thank you very much, Mr. Farr.

MR. KANAREK: I have one other question to ask Mr. Farr if I may.

THE COURT: It is not up to me to decide, you may ask it. He may refuse to answer if he wants to.

MR. KANAREK: 1070 says I believe that you cannot be held for contempt for refusing to disclose the source.

I would read this section as to indicate that you—

I am certainly not soliciting that anyone find you in contempt.

I believe that this Code Section does not prevent his Honor, Judge Older, from asking you to reveal what is in fact going to be potentially published.

I think that the Court could order you to state, and bring to us the document that would be potentially

published, because this only refers to the source, your Honor, and so I think your Honor does have the power, and I would ask your Honor to exert that power, to order that the subject matter itself be brought to your Honor, because I don't think that that is within the purview of this Code Section, because obviously [13] if it is going to be published—

THE COURT: What is the point of that? He already said he has it.

MR. KANAREK: We would like to know exactly what he is talking about, what item, what material.

THE COURT: I have to assume the worst, which is he has the statement which incriminates all of the defendants.

MR. KANAREK: I mean this way I would ask your Honor to—

THE COURT: I don't see anything to be gained by it, Mr. Kanarek.

I would ask this, along with my request for a voluntary disclosure, I would also make a further request to the Herald-Examiner through you that they do not publish anything pertaining to any of these defendants in this case as revealed in the statement.

MR. FARR: I was going to make that suggestion on my own to them.

THE COURT: Let me go one step further, Mr. Farr:

The Court is now conferring with counsel precisely on the question of what if any portions of the testimony of these two witnesses, Roni Howard and Virginia Graham, may be gone into before the jury.

Now, if either or both of them are permitted to testify, of course it will be done in open court, and [14]

the Herald-Examiner along with all the other media representatives will be there to hear it and see it, so it isn't a question of whether you get any of it or not.

If any of it is testified to you will have all of that.

The only thing you will not have, if you limit yourself to what is done in open court, will be those portions if any that are deleted by the Court in accordance with the United States Supreme Court and California Supreme Court decisions which require such deletion where a co-defendant could be incriminated by a statement of a declarant defendant.

I'm sure you can appreciate that. [15]

MR. FARR: I do understand that that is the argument. I understand your Honor's position. It is a question in my mind, protecting the jury as opposed to protecting the public.

We might ultimately differ as to that, but I don't know that. I will relay that as rapidly as possible.

THE COURT: I think that is a large area where there is a disagreement between the press and the Court over these so-called gag orders.

The press, of course, takes the position, as the Times did this morning, I have a copy of their editorial on my desk here, that they should be able to publish everything and anything concerning the trial or the parties thereto without any limitation.

Unfortunately that has led to some disastrous results. Witness, for example, Shepard vs. Maxwell. As a result of that, and other cases, the courts have imposed upon the trial judge the duty of limiting the disclosure and dissemination of pretrial and trial publicity which would be harmful to any of the defendants, or prejudice their case in any way.

This, of course, means that everything does not get into the newspapers.

But the point is that all legally-admissible evidence gets into the newspapers because we don't take any legally-admissible evidence unless it is done in open court. [16]

So that, I think, is a problem.

MR. KANAREK: Your Honor, may I request the Court to do what I think it did in another situation somewhat similar to this, though not completely analogous, I will ask your Honor to ask Mr. Farr the names of the people in the Herald Examiner who would be ultimately responsible, and I make a motion your Honor call those people forthwith and perhaps your Honor can use the prestige of the Superior Court in such a conversation, and maybe take part of the load off Mr. Farr and at the same time accomplish the result we all want which is to keep this material from being published.

I do make the motion that your Honor ask him the names of these people, and that your Honor call them immediately and stop what may already be perhaps in linotype or whatever they do in the newspapers.

THE COURT: I prefer to let Mr. Farr handle it this way. He is the representative that is covering this trial for his paper. He is intimately familiar with what is going on. He is the one who apparently received the statements, and is aware of the identity of the person involved.

Undoubtedly he will have a major, if not a full, responsibility of determining what is published, if anything, and he certainly is capable of dealing with his superiors or employer on these questions. [17]

I don't want to go around him and talk to someone over there who may not be familiar with all of the facts.

MR. KANAREK: I am sure he would not interpret it that way, your Honor.

THE COURT: I am not going to do it that way.

MR. KANAREK: Very well, your Honor.

MR. FARR: Your Honor, may I inquire with what proper decorum I can deliver the answer? I don't want to just walk into chambers. Can I make an appointment— [18]

THE COURT: Certainly, any time before court in the morning. I'm here usually before 8:30.

MR. FARR: I will try to get the answer this afternoon however.

THE COURT: Or before we resume in the afternoon.

MR FARR: I will try because I did have a lengthy conference with my superiors this morning on this very issue.

Their inclination was to publish it already, and there are various reasons, and I don't know whether anybody feels it should be talked about, and I really don't care, but I am very concerned about Mrs. Graham's status, and the reason it isn't already published is I want to make it crystal clear we are concerned as to doing something redounding to her detriment.

At this point we are not in a position of ever having talked to her. That is what the problem is.

THE COURT: If it will help you I will have a copy of this proceedings here in chambers this morning while you have been present, typed up.

We will just have to make an exception to the publicity order. This will not be for public dissemination. It will be simply to assist you in discussing the matters we discussed here with your superiors.

Does anyone have any objection to that?

MR. KANAREK: No. [19]

MR. FITZGERALD: No.

MR. SHINN: No.

MR. HUGHES: No.

MR. FARR: I am willing to commit myself—

THE COURT: Just the portion while Mr. Farr was present until he leaves.

I will order the reporter to prepare one copy of that for Mr. Farr.

Is that enough, one copy?

MR. FARR: Yes.

THE COURT: Would you indicate to Mr. Farr—the next time you are in court you can ask Mr. Hollombe if it is ready. Just give it to him without any further ado.

MR. FARR: If I do get the answer in time or if I get some sort of directive that should be relayed, can I contact Mr. Darrow?

THE COURT: Yes, at any time.

MR. FARR: I will do that as rapidly as possible, your Honor.

THE COURT: Thanks very much, Mr. Farr, I appreciate your coming in.

MR. FARR: It was nice meeting with you. [20]

APPENDIX "B".

Contempt Hearing Reporter's Transcript June 3, 1971.

In the Matter of the Contempt of William T. Farr.

Superior Court of the State of California, for the County of Los Angeles.

Department No. 104.

Hon. Charles H. Older, Judge.

The People of the State of California, Plaintiff, vs. Charles Manson, Et Al, Defendants. No. A 253,156.

June 3, 1971

APPEARANCES:

For the People: William F. Stewart, Esq. Deputy County Counsel.

For William T. Farr: Grant Cooper, Esq. Edward L. Compton, Esq. Stephen Reinhardt, Esq.

J. Hollombe, Official Reporter.

LOS ANGELES, CALIFORNIA, THURSDAY, JUNE 3, 1971, 10:25 A.M.

THE COURT: In the Matter of William Farr.

MR. COOPER: We are ready for the Respondent Witness, Mr. Farr. I am Grant B. Cooper, appearing for Mr. Farr; and at this time, may it please the Court, I move that Edward L. Compton of the law firm of Flint & Mackay, who are the attorneys for the Los Angeles Herald-Examiner, be associated amicus in this case, and I likewise move the Court that Stephen Reinhardt, on behalf of the Los Angeles Newspaper Guild, a chapter of the American Newspaper Guild, also be associated as amicus, if your Honor please. Each of them has an interest in the principles involved in this matter.

I have taken the matter up, of course, with the County Counsel, and they have no objection.

THE COURT: The motion is granted.

MR. STEWART: Your Honor, I am William F. Stewart, Deputy County Counsel, representing the Superior Court, County of Los Angeles.

MR. COOPER: May it please the Court, at this time I just want to go on record. I object to the jurisdiction of this Court on the ground the case has now been lodged in the Supreme Court by appeal.

I am not going to argue it. I realize the Court may or may not have jurisdiction. I am not familiar with the points that have been raised on appeal. I just want to make the motion for the purpose of the record, if your [2] Honor please.

THE COURT: Of course there have been no points raised on appeal yet.

MR. COOPER: A notice of appeal has been filed, I assume.

THE COURT: I don't even know that.

MR. COOPER: There is an automatic appeal in any event.

MR. LAWRENCE: I will direct the Court's attention to Whitlow versus Superior Court, 86 Cal Ap 2nd 145, wherein the Court held that a trial court had jurisdiction to investigate contempt proceedings even after the case had terminated in that court.

So I feel the Court has continuing jurisdiction to examine the allegation for contempt.

MR. COOPER: I am not going to argue it any further.

THE COURT: I read the various papers filed by both Mr. Farr and his counsel, and also those filed this morning by Mr. Compton, as well as, of course, the

County Counsel's papers and points and authorities in support of the Order to Show Cause.

MR. COOPER: I would like at the proper time, if your Honor please, to amplify that by oral argument.

THE COURT: All right, yes. You also sent me the other day, Mr. Cooper, a batch of excerpts from various things, and I reviewed those also. Do you wish to augment your record at this time?

MR. COOPER: Yes, if your Honor please, I would assume if your Honor please, that probably, obviously I will abide [3] by your Honor's suggestion. Possibly Mr. Farr should be called to the witness stand at which time I would make the proper objection.

THE COURT: All right. That is agreeable.

MR. COOPER: Mr. Farr, will you please step forward.

THE CLERK: Raise your right hand, please. Would you please repeat after me:

I do solemnly swear.

THE WITNESS: I do solemnly swear.

THE CLERK: That the testimony I may give—

THE WITNESS: That the testimony I may give—

THE CLERK: —in the cause now pending—

THE WITNESS: —in the cause now pending—

THE CLERK: —before this court—

THE WITNESS: —before this court—

THE CLERK: —shall be the truth—

THE WITNESS: —shall be the truth—

THE CLERK: —the whole truth—

THE WITNESS: —the whole truth—

THE CLERK: —and nothing but the truth—

THE WITNESS: —and nothing but the truth—

THE CLERK: —so help me God.

THE WITNESS: —so help me God.

THE CLERK: Would you be seated, please. Would you please state and spell your name.

THE WITNESS: William T. Farr, Jr. W-i-l-l-i-a-m; F-a-r-r. [4]

WILLIAM T. FARR,

being called as a witness, was examined and testified as follows:

THE COURT: Mr. Stewart.

MR. STEWART: Before we proceed, perhaps we should introduce certain things into the record. I have reference to the affidavits previously filed by Mr. Burn, Mr. Steinberg and also Mr. Farr. Any objection, Mr. Cooper, to introducing those affidavits?

MR. COOPER: None. I would also like to include the declaration—my own declaration. Didn't I give you one this morning?

MR. STEWART: Yes, you did. I have no objection to that either.

THE COURT: The first three were Burns, Steinberg and—

MR. STEWART: And William Farr.

THE COURT: Yours, Mr. Cooper?

MR. COOPER: And I would also offer, if your Honor please, the declarations of Tom Caton, the Executive City Editor of the Los Angeles Herald-Examiner, and William R. Hearst, Junior, a publisher of the Herald-Examiner—pardon me, George Hearst, Junior, if your Honor please.

THE COURT: Very well. They will be received as exhibits for the purpose of this proceeding.

MR. COOPER: And further, if your Honor please, I would also move the Court—I assume the Court will take judicial notice—I do not have reference to all of the pages of the transcript in the Manson case, in

which Mr. Farr [5] appeared in chambers on the record in connection with this matter, but I would ask the Court either take judicial notice of them, or I would move that they be deemed to be received in evidence, all of the proceedings in which Mr. Farr participated.

I think that was October 8th and 9th, 1970.

THE COURT: And do you have any objection to including in that, Mr. Cooper, the proceedings in which Mr. Steinberg participated, which I believe consisted only of a bench conference with all counsel present?

MR. COOPER: None whatsoever, your Honor.

THE COURT: On the same day or one of those two days.

MR. COOPER: So stipulated.

THE COURT: All of those matters will be received by reference as part of this record.

MR. STEWART: I also move the Court to accept by reference the publicity order and any amendments thereto issued by the Court in this case.

MR. COOPER: So stipulated.

THE COURT: They will be received by reference. That is the publicity order, I believe, of December 10th, as amended later by this Court during the course of the trial.

MR. COOPER: I think that would be December 10th, 1969.

THE COURT: Yes, and it was later amended during the course of this trial in 1970.

MR. COOPER: Prior to October 8th and 9th.

THE COURT: Prior to October 8th and 9th.

MR. COOPER: I would so stipulate, prior to October 8th [6] and 9th, of 1970.

THE COURT: Those documents will be received by reference as part of the record.

MR. STEWART: I also offer to introduce the statement of Virginia Graham, the complete statement of Virginia Graham, which was taken during the course of the trial.

MR. COOPER: I have no objection to that with the further stipulation that that statement, not quite in haec verba, but a substantial portion of that statement was in fact published in the Los Angeles Herald-Examiner.

THE COURT: Have you had a chance, Mr. Cooper, to review this so called complete statement of Virginia Graham, which is a special exhibit in the case?

MR. COOPER: I have not, your Honor, but my information comes from Mr. Farr.

THE COURT: I want to be sure the record is accurate. The clerk has that, and if there is any question in your mind, I think it should be shown to Mr. Farr, if he can recall whether in fact that is what he received.

MR. COOPER: As a matter of fact, I have a copy of it. But frankly I have not read the Virginia Graham statement, if your Honor pleases. My only purpose—and that is this: Section 1070 says not only must the information have been received—but "and published." I don't want there to be any question about that.

THE COURT: I understand. I am sure there will be no problem about that. I want to be sure the record reflects what he received. [7]

CROSS-EXAMINATION

BY MR. STEWART:

Q Mr. Farr, I show you a document purporting to be a complete statement of Virginia Graham on Monday, October 5th, 1970. Would you examine that,

please, and state whether that was the transcript that you received?

A Yes, it is.

THE COURT: Then it will be received by reference as part of the record in this proceeding, and also I understand there is a stipulation of counsel that the publication in the Los Angeles Herald-Examiner on October 9th—or was it—

MR. COOPER: October 9th.

THE COURT: —1970, was based upon and contained substantially all of the material in this statement of Virginia Graham.

MR. COOPER: So stipulated, your Honor.

MR. STEWART: So stipulated. I have one more offer in evidence, your Honor. I don't have it with me, but perhaps Mr. Farr can furnish it—that is, a copy of the article that he wrote on October 9, 1970, that was published in the Los Angeles Herald-Examiner.

MR. COOPER: I will offer to stipulate that Mr. Farr may lodge that with the clerk at some subsequent time, and it be marked as an exhibit in this case, if it is agreeable with counsel and the Court.

THE COURT: Very well, it will be received. That will be the complete story and the headlines. [8]

MR. COOPER: Yes, your Honor. Will you get that, Mr. Farr, and give it to the clerk of this court?

MR. FARR: Yes, I will. If the Court pleases, I have one question in regard to the stipulation as to the entirety, the substantial entirety of the statement being printed in the article. There are portions of the statement that are not in the article.

MR. COOPER: That will be reflected, if your Honor please, by the article itself. For the purpose of this proceeding I think we have it covered.

THE COURT: All right, you may proceed, Mr. Stewart.

Q BY MR. STEWART Mr. Farr, did you execute a declaration that was filed with this Court on the 28th of May, 1971?

A Yes, I did.

Q And in that declaration did you state that prior to October 8th, 1970, "I obtained from confidential sources a transcript of an alleged statement of one Virginia Graham, relating to her conversations with one of the defendants in the above entitled cause, to wit, one Susan Atkins"?

A Yes, sir, I did.

Q Was that transcript the complete transcript that was previously introduced into evidence?

A Yes, it was.

Q And was Virginia Graham a prospective witness in the case at that time?

A That was my understanding, yes. [9]

Q She had not yet testified?

A That is correct.

Q Did the statement of the transcript of her testimony contain certain statements that were not subsequently testified to in open court?

A Yes, I believe it did.

Q You observed her testify during the course of the trial?

A Yes, I did.

Q And were you covering the trial—

THE COURT: Just a moment, Mr. Stewart, perhaps so the record will clearly reflect that, counsel would be willing to stipulate for the purpose of this record the testimony of Virginia Graham be received by reference, in the case, which would be the best evi-

dence of whether or not her testimony included all or part of the matters in the statement.

MR. COOPER: I would be happy to enter into that stipulation, your Honor.

MR. STEWART: So stipulated.

THE COURT: Then the testimony of Virginia Graham, including all direct, cross, redirect, recross, etcetera, will be received by reference as part of the record for the purpose of this proceeding.

Q BY MR. STEWART: Now, Mr. Farr, were you covering the trial for the Herald-Examiner from its very beginning?

A Yes, I did.

Q And you were familiar with the order re publicity [10] issued by the Court?

A Yes, I was.

Q Did you know whether or not the source of your information, as stated in your declaration, was subject to the order re publicity at the time he gave you the transcript?

A May I confer with counsel?

THE COURT: Yes.

(Off the record discussion between the witness and Mr. Cooper)

MR. COOPER: May we have that question re-read?

THE COURT: Read the question.

(Whereupon the reporter reads the pending question.)

THE WITNESS: I think I can answer that by stating that I was aware that the attorneys in the case were subject to the gag order.

MR. STEWART: So then the person or persons who gave you the information was one of the attorneys involved in the case?

MR. COOPER: May I have that question read again, please, with the permission of the Court.

THE COURT: Yes, read the question.

(Whereupon the reporter reads the pending question.)

MR. COOPER: If your Honor please, at this time I would advise the witness to invoke the provisions of Section 1070 of the Evidence Code. [11]

THE COURT: Well, I think the question is somewhat ambiguous, Mr. Cooper; I am going to sustain my own objection to it and ask Mr. Stewart to reframe it. I don't like the word "involved."

Let's ask Mr. Farr if it was an attorney for a party in the case.

MR. STEWART: Yes, your Honor.

Q Mr. Farr, then the source of the information was one of the attorneys representing one of the parties in the case?

THE COURT: I assume you make the same objection.

MR. COOPER: I would advise the witness to invoke the provisions of Section 1070 of the Evidence Code of this state.

You will follow my advice?

THE WITNESS: Yes. I will respectfully decline to answer the question pursuant to the provisions of Section 1070 of the Evidence Code.

MR. STEWART: Your Honor, I think that the claim of immunity under 1070 is premature in that the witness' previous statement mentioned attorneys. He said he was aware that the attorneys were subject to the gag order, and I asked him previous to that if the person who gave him the information was subject to the order re publicity. So by his subsequent answer he admitted that the source was an attorney.

THE COURT: Well, I think we will have to lay a further foundation before the question can be put to the witness, [12] as a matter of law. I think you will have to establish what his occupation was; what it is now.

MR. COOPER: I would assume, and I suppose counsel assumed, by virtue of the declaration being in evidence that was established.

THE COURT: Is it established? The declaration, I do recall now, states that he presently is not a newspaper man.

MR. COOPER: That is in the declaration.

THE COURT: He is presently press secretary for the District Attorney.

MR. COOPER: Yes, your Honor.

MR. STEWART: That was the purpose of introducing the declaration, your Honor. I thought we could save time.

THE COURT: All right. Then would you reframe the question once more, Mr. Stewart.

Q BY MR. STEWART By your previous answer, Mr. Farr, is it a true statement to say that the source of your information was an attorney or attorneys representing one of the parties in the law suit, People versus Manson?

MR. COOPER: I give you the same advice, Mr. Farr.

THE WITNESS: And I respectfully decline to answer pursuant to the provisions of Section 1070 of the Evidence Code.

THE COURT: Mr. Farr, I will order you to answer the question under penalty of being found in contempt of Court for failing to do so.

MR. COOPER: If your Honor please, this is the point [13] where I think possibly we would like to argue the matter.

THE COURT: Very well.

MR. COOPER: And, as a matter of fact, to make the record complete—

THE WITNESS: Should I reiterate declining, since I have been ordered.

MR. COOPER: You again respectfully decline to answer?

THE WITNESS: Yes, I do.

MR. COOPER: On the same grounds?

MR FARR: On the same grounds.

MR. STEWART: Your Honor, if I may make a suggestion, I have other questions to put to this witness, some of which may not involve the source of the information, and perhaps I could ask those questions of the witness, and then we can argue the legal issues later.

MR. COOPER: Certainly. I have no objection to that.

THE COURT: All right. Very well.

Q BY MR. STEWART Mr. Farr, at the time you received the transcript of Virginia Graham, did you believe the source, the person or persons who gave you the transcript, was violating the order re publicity?

A I am not certain that I gave that particular point any specific thought.

Q Did the source say to you that he thought he was violating the order re publicity?

MR. COOPER: I object to that—pardon me; I don't object to it. I would advise the witness to again invoke the immunities of Section 1070 of the Evidence Code. [14]

THE COURT: On second thought, Mr. Stewart, I think we are going to have to hear the arguments as to each of these because I am going to have to make a ruling on these refusals.

MR. STEWART: Very well, your Honor.

THE COURT: If we start accumulating questions without answers, I'm afraid the record won't adequately reflect what the rules are.

MR. STEWART: Very well, your Honor.

THE COURT: Let's go back to the first one that he refused to answer, and I will make the ruling on that.

That was the question, as I recall, as to whether or not the person from whom you received the statement of Virginia Graham was an attorney or attorneys representing a party in the case.

MR. STEWART: That's right, your Honor.

THE COURT: And you have refused to answer that on advice of counsel, based upon your alleged immunity under 1070 of the Evidence Code. Is that right, Mr. Farr?

THE WITNESS: That is correct, your Honor.

THE COURT: The Court has advised you that if you refuse and fail to answer that question, you do so under penalty of being found in contempt of Court; and you still fail and refuse to answer that question.

THE WITNESS: I still respectfully decline to answer.

THE COURT: Very well; then the Court will find you in direct contempt for failure to answer that question.

MR. COOPER: If your Honor please, will your Honor [15] please withhold that until we argue the matter?

THE COURT: I will vacate the finding and let you make your argument, Mr. Cooper.

MR. COOPER: May it please the Court, I don't know whether the Freudian slip of your Honor in finding him in contempt is indicative of the Court's mind at this time.

THE COURT: There is no Freudian slip. I assume you put all of your arguments and authorities in your motion papers, Mr. Cooper. Now, if there is something additional I would like to hear it.

MR. COOPER: I wouldn't say it is additional, but sometimes you cannot emphasize on paper as you can orally, and some of these things, I think maybe, if your Honor please, that I might explain them better orally than I could do it on paper.

I wanted to state first, if your Honor please, that I was about to say that I was somewhat concerned, and gave some consideration to challenging the Court in this matter, only because it is evident from the declarations that were filed that the Court probably had a point of view.

However, as any experienced lawyer will do, he makes inquiries about each judge, and I have found that once your Honor makes up his mind, he is pretty hard to change.

On the other hand, I have been informed that your Honor does have an open mind, and will listen. I am confident that your Honor will.

THE COURT: I don't know of any authority for a challenge. If you are talking about 170.6 of the Code of [16] Civil Procedure, where there is a direct contempt,—

MR. COOPER: There is no challenge, if your Honor please. There is no challenge in any event. I was merely making an observation.

THE COURT: My mind is not made up, if that will set yours at ease, Mr. Cooper.

MR. COOPER: Thank you, your Honor.

If your Honor will pardon a personal reference, let me state to your Honor that generally speaking I am on your side.

THE COURT: I am aware that you are a member of the Advisory Committee On Fair Trial And Free Press, Mr. Cooper. I was going to bring that up a little later. I want to ask ~~you~~ some questions about that.

Go ahead.

MR. COOPER: I have very strong feelings about that, and, as a matter of fact, I admire courts, if you will pardon the vernacular, that have the guts to stand up to the press. But at the same time, if your Honor please, I am also first and foremost a lawyer. I believe that under the statute that we have confronting us that Mr. Farr does in fact enjoy the immunity.

Now, with the Court's permission, I do not want to trespass upon the Court's time, but can we agree between us—I don't know what counsel's position is; I don't want to argue something and rehash something—I will agree this is an immunity, number 1.

But does counsel agree without my further argument [17] that this is an absolute immunity, for whatever that means?

MR. STEWART: I can't agree to that, your Honor, primarily because I don't think it is relevant. I think the question is whether or not the witness falls within the scope of the immunity in the first place, and our contention is that since he is no longer—

THE COURT: Perhaps it will help your argument, Mr. Cooper, if I give you some of my views.

MR. COOPER: Certainly. May I sit down?

THE COURT: Certainly.

In the first place, I disagree that this is a standing up to the press. The fact that Mr. Farr happened to be a reporter was simply a happenstance. It could have been anybody, and this proceeding has nothing whatever to do with the press so far as this Court is concerned.

The reason for the proceeding is because it appeared during the course of the trial that there had been a flagrant violation of the Court's publicity order which might very well jeopardize a fair trial for the defendants, and it was the violation of that order, if there was one, that I am pursuing, the investigation of that.

It just happened that Mr. Farr was a reporter, and it just happened he was the one that received this document. But it could have just as well have been one lawyer to another, or one lawyer, if it was a lawyer, to a private citizen.

So this is not in any way a confrontation between Court and press. It was never intended to be so. [18]

Now, as far as I view the issues: the issue, first of all, is whether or not Mr. Farr comes within the statutory language of 1070. It is clear that he doesn't, literally. Certainly one of the questions is whether or not the provisions of that Section go beyond its literalness; and, assuming they do, whether under this particular set of facts, that immunity is absolute.

I don't think there is any such thing as an absolute immunity. Even First Amendment freedoms in the federal constitution are not absolute, and this certainly is not of that character.

But I think these are the questions I have to decide.

MR. COOPER: Well—

THE COURT: The reason why I think it is so important is because in resolving these issues, it may very well be it will have to be resolved by some appellate court; I don't know yet, but if there is an absolute immunity, as you suggest in your papers, then publicity orders mean nothing, and a trial can be subverted by the simple process of disclosing information to a reporter, and I find that to be a wholly untenable position. I don't think that was ever intended by the legislature. I don't think it is a situation that is required either by the state or the federal constitution, and to me it just cannot be.

Now, I haven't made up my mind, but I am telling you that is how I see the problem today.

MR. COOPER: I appreciate that, your Honor. [19]

THE COURT: If the law is such that the publicity order is rendered virtually worthless, by means of this immunity, I think that should be known. I think it should be known to the legislature, to the courts and to the people at large, because it would appear to me if that is the law, there is some remedying that needs to be done. That is the reason this proceeding is being brought.

MR. COOPER: Then I shall address myself, if your Honor please, again very briefly, and I mean briefly, to the history of this legislation.

As I stated in my brief, seldom has a court had the opportunity to have the benefit of such a full history as we have in this case, by virtue of the fact the California Law Revision Commission has published its thoughts, have delivered them close to the Governor and Legislature first in 1963 and again in 1965, and if your Honor has read, as your Honor has indicated, that history, that is referred to in the briefs, your Hon-

or is aware of the fact that the California Law Revision Commission believed as your Honor believes, and as I would have voted had I been a member of the Commission, not to grant to the press the absolute privilege—sometimes I will say I recognize its immunity, so I may misspeak myself, but I do mean immunity.

For they set forth the very arguments that your Honor has advanced; that to give this broad immunity—they therefore suggested and recommended both in their 1963 report and again in 1965, that it be discretionary as distinguished from an absolute immunity. [20]

And they pointed out, and I am not going to repeat those arguments, they are in the brief and they are in the documents that are referred to as exhibits, the very arguments that your Honor has suggested.

The matter then, after the first report was sent to the various bar associations, including the State Bar, and interested persons, and they received back suggestions and comments, and again in 1965, in January of 1965, they recommended the passage of a discretionary immunity so that the Court in a situation like this could weigh the equities, and exercise discretion where it was in the interest of justice, they could then order a reporter to testify.

But the legislature, if your Honor please, in its wisdom, or lack of wisdom—they had the power—they rejected the arguments and adopted the present section, 1070.

Now, we come then next to the very crux of the situation, and I will agree, if your Honor please, that if we adopt the literal language of the section, there isn't any question that he would not enjoy the immunity.

However, I think the history clearly demonstrates that that was not the legislative intent, for in January, 1965, when the California Law Revision Commission proposed an Evidence Code, they proposed sections 1070 through section 1073. This was a discretionary recommendation, and stated that a newsman may not be adjudged in contempt for refusing to disclose the source of news procured for publication, and published by news media, unless the source [21] has been disclosed previously, or the disclosure of the source is required in the public interest or otherwise required to prevent injustice.

And in that same Chapter Five, that they recommended in January, they recommended the passage of Section 1073 of the Evidence Code, which reads:

> "Determination of the newsman's claim. The procedures specified in subdivisions a and b of Sections 914 and in Subdivisions a and b in Section 915 applies to the determination of a newsman's claim for protection under Section 1072,"

which was the section I just read to your Honor.

They there set out, if your Honor please, the same procedure as the Court would use to exercise its discretion in the claims or privileges, and Section 915, which is the law today, states:

> "When a Court is ruling on a claim of privilege under Article 9"—

I am going to skip some, if your Honor please:

> "or under Section 1060, which is a trade secret, and is unable to do so without requiring disclosure of the information claimed to be privileged, the Court may require the person from whom disclosure is sought or the person authorized to claim

the privilege, or both, to disclose the information in chambers, out of the presence and hearing of all persons except the person authorized to claim the [22] privilege, and such other persons as the person authorized to claim the privilege is willing to have present."

And the significant portion of that is this: if the Judge determines that the information is privileged, or I can insert the word "immune", neither he nor any other person may ever disclose—may ever disclose, if your Honor please, without the consent of the person authorized to permit the disclosure what was disclosed in the course of the proceedings in chambers.

And of course what was disclosed in chambers is the very information that is sought to be protected. Now because, and only because the legislature chose to reject the—what is the word I am trying to think of as distinguished from absolute—the discretionary—because they chose to reject the discretionary immunity referred by the California Law Revision Commission, it was unnecessary to adopt Section 1073, for there was nothing then for the Court to exercise its discretion about, because it was an absolute immunity, whatever absolute might mean, if your Honor please.

THE COURT: I don't think you add anything to it by using the word "absolute." It simply means in those cases where the immunity applies it is absolute, but that is begging the question. In what cases does it apply?

For example, does it apply under the facts of this case?

MR. COOPER: Yes, if your Honor please, if the suggestion is made that he participated in a crime him-

self, he may be [23] prosecuted for any crime, or he may be given any other penalty than that of contempt, because the section says he shall not be adjudged in contempt, and in Judge Philbrick McCoy's opinion, from which I quoted in the brief, I have the entire opinion here, in a civil procedure, of course he can be given civil sanctions, or if he has committed a crime he can be prosecuted for a crime.

THE COURT: What I was referring to specifically, Mr. Cooper, is this: Here we don't have the usual situation where a reporter is procuring news in a legitimate fashion. Here we have a reporter apparently in contact with a lawyer, apparently who is subject to a valid Court publicity order, the reporter having knowledge of that order, and obtaining either by a conspiracy or possible aiding and abetting, at least with knowledge, this document that comes within the express terms of that order.

Now, I don't consider that to be a legitimate news procuring activity of the reporter. In fact, if Mr. Farr were soliciting the lawyer to turn this over to him, I think he would be subject to a contempt for interfering with the lawful administration of justice.

Apparently it was a gratuitous act on the part of someone handing him this thing. I don't think he had any more right to that document than if it had been a stolen document and handed to him by the thief.

This was under a valid court order; this was not legitimate news gathering. That is what I mean by the facts of this particular case. [24]

MR. COOPER: I suggest, your Honor, if he has committed a crime, he can be prosecuted.

THE COURT: I am not suggesting he has committed a crime. I am talking now about the terms of

this immunity, and whether he comes within that, even assuming that he—that whether or not he is now a newsman is irrelevant. I am not at all convinced of that yet.

MR. COOPER: I was addressing myself only to that point.

THE COURT: Having in mind the express terms of the statute which says who is employed by a newspaper, and so forth; but that doesn't make any difference.

I think we have here a very unique situation that the immunity was never intended to apply to, and that is really the crux of this problem.

If, as I said before, the law is such that this so-called absolute immunity extends to this kind of a situation, then I think it is time we knew about it because I think there is a large gap in the law, a serious gap, that serves no useful purpose except to allow persons to subvert lawful publicity orders that would jeopardize in certain cases the fair trial of the defendants, and that is what I am very much concerned about.

MR. COOPER: If your Honor please, as much as I love to hear myself talk, I have no disposition to waste the time of the Court, and I think I grasp the sense of the Court's feeling. Since the matter has been adequately briefed, I think I will be happy to submit the matter, unless counsel has something they want to say. [25]

THE COURT: I certainly will hear from them. I would like to ask you, if I may, Mr. Cooper, some questions, and I don't mean to put you on the spot by any means, because I am familiar with your part in the American Bar Association project for minimum standards on Criminal Justice, and I know you have

been on the advisory committee of the Reardon Report, and I am familiar with the terms of the Reardon Report.

Now, certainly, you gentlemen, in formulating that report and recommendation, must have considered the problem of enforcement. I say certainly; I know you did because it is in the Report. The problem of enforcing the instructions of the Court; the Court's orders on publicity, the conduct of attorneys with respect to the divulging for public dissemination of matter during the course of the trial, and so forth. It is right in the report. I have it right here.

MR. COOPER: No question about it.

THE COURT: Did you consider this problem, and, if so, how did you resolve it? You certainly did not intend for a court to make an order that it had no way of enforcing; that anybody could violate by the simple device of giving the information to a reporter.

MR. COOPER: I cannot say that this precise question, if your Honor please, was ever—this precise question that is now before us was ever considered. Obviously we did expect that the Court would enforce—that is what I meant when I said I appreciated the Court's giving vigor to its [26] orders, and I believe that, if your Honor please, I truly believe that.

THE COURT: I think I have a duty to do it whether I personally want to or not.

MR. COOPER: I don't quarrel with that. I don't think it applies in this case, however. But the general thrust of these reports, if your Honor please, was against the profession itself, and to prevent the members of the profession from giving out this information. That was the main thrust, because we had concern because of the First Amendment rights enjoyed by the press, not

to put any handcuffs on the press, because we did not feel that we could enforce them.

THE COURT: Well, I don't read Part 4, recommendation relating to the exercise of the contempt powers, being limited to anybody.

MR. COOPER: No, it is not, if your Honor please. But here, if your Honor please, what I said in the beginning was this:

Here the legislature has intervened, if your Honor please. I would not be in favor of this legislation.

THE COURT: But you must have had before the Committee, Mr. Cooper, the knowledge—how many states are there that enacted these newsman immunity statutes? There are quite a number. You cite the number in your brief, and some of those are considered to be absolute; some are conditional, and so forth.

Surely this problem must have come up before the [27] Committee.

MR. COOPER: If your Honor please, I attended all the meetings. I don't think I missed a meeting, and I don't recall, I honestly don't recall this precise question ever having been brought up, nor the question of the newsman privilege. I am sure it is not discussed in any of our reports.

THE COURT: Well, this is the problem, as I see it.

MR. COOPER: I understand.

THE COURT: And you may very well be right.

MR. COOPER: I think I am, but that is what makes horse races, if your Honor pleases, and law suits.

MR. COMPTON: Not that I want to intervene, your Honor, but I would like a moment to discuss a

previous agreement we had in the course of the argument with Mr. Cooper.

THE COURT: Yes, Mr. Compton.

(Off the record discussion between Mr. Compton and Mr. Cooper.)

MR. COOPER: Mr. Compton called to my attention something that I did overlook. There was mentioned in the County Counsel's brief that this was the only manner in which this matter could be reached.

Counsel don't think this is the only manner in which it can be reached, if your Honor please.

THE COURT: You mean by way of Order to Show Cause.

MR. COOPER: Of this particular witness. Judging [28] from what he testified to, or what he stated in your Honor's chambers on the record; he did make the admission, as I recall, that he had obtained these statements—the statement of Virginia Graham from the attorneys. He did not indicate which side of the fence, whether one side or both sides.

That would prove, in my opinion, if your Honor please, the corpus delicti of a contempt of an attorney, would prove that the crime of contempt was committed by someone.

I think just as this Court has the power to have Mr. Farr here, the Court could very well have each of the counsel who have participated in this case, to inquire of them—now, they are officers of the court, and I would assume that any one of them would either claim the Fifth Amendment, or he would tell the truth; and if he made an admission that he did, the contempt would be complete, because Mr. Farr would testify—

Now, I jumped the gun a little bit here, if your Honor please. I think he would testify under oath, under

those circumstances that he obtained it from the counsel on one side or the other, maybe both, so that you would have the corpus delicti of the contempt, and if one of the officers of the court told the truth, as I expect he would, or invoke the Fifth Amendment, this would suffice.

Now, there are sound arguments, if your Honor please, for the Court to proceed in that fashion, and I know that your Honor has stated that he has read these [29] documents that we have submitted as exhibits, but possibly your Honor has not read them with the jaundiced eye that we have on this side of the table, and that is, one of the things that the press understandably, and it's gone all over the Country, with the attorney general of the United States going on fishing expeditions.

I realize this is not a fishing expedition. But the press do not like to be put in the position of violating their confidence by virtue of their code of ethics, if your Honor please, and particularly at the stage of the proceedings where this is in the nature—this is the investigatory stage; this is not a trial of a contempt matter.

And just as in the Caldwell case, or at least the Circuit Court has ruled, I realize that the Supreme Court has granted certiorari in the Caldwell case, but there at least the Circuit Court of Appeals has recognized a constitutional right, if that is upheld, there is a constitutional right that forcing a reporter at the investigatory stage—this was before a grand jury, to reveal the source of his information, hampers the free flow of information.

For that reason, if your Honor please, I think your Honor might well continue this matter for several reasons.

First, the subject that was made in the brief of Mr. Compton's, representing the Los Angeles Herald-Examiner and, secondly, to pursue this other avenue that is open to inquiry of the officers of this court who were the [30] attorneys of record of both sides in this case as to whether or not they did or did not furnish this to Mr. Farr. I think that would be a practical and honest solution of this vexing problem.

THE COURT: Well, don't you suppose, Mr. Cooper, that an attorney who had violated the publicity order, if there is such, would assert his Fifth Amendment privilege?

MR. COOPER: I don't know; I don't know. He might. Suppose he does. If he did then we can come back again. There isn't any great rush on this matter, if your Honor please.

I am a firm believer—I believe—I can't tell what—if I were representing him, and he had, I would advise him to take the Fifth Amendment, if your Honor please, either tell him to do that or tell the truth.

THE COURT: That would be a vain proceeding.

MR. COOPER: If your Honor please, I don't think so. At least if your Honor is right, your Honor would be on firm ground. I don't concede that your Honor is right, but your Honor would be on firmer grounds if the Supreme Court follows the decision in the Caldwell case.

THE COURT: I might be on firmer ground if Mr. Farr would answer the question as to whether or not he got the material from a lawyer in the case, before I started bringing in lawyers and asking them under oath whether or not they had anything to do with it.

MR. COOPER: Well, he testified to that in chambers, if your Honor please. I was just jumping the gun a little [31] bit.

THE COURT: That was an informal proceeding, purely voluntary. I made it known to Mr. Farr at that time he didn't even have to come into chambers.

MR. COOPER: With the Court's permission, may I confer with Mr. Farr.

THE COURT: We will take a fifteen minute recess.

(Recess)

MR. COOPER: May it please the Court, with the Court's permission, counsel will make a further inquiry, and then after he does I would like to make just a very few observations.

THE COURT: Very well. If this has to do with the question that I raised just before the recess, Mr. Cooper, I don't want you to be under any misapprehension that I am in any way committing myself to the alternative procedure that you suggest. I certainly will consider it, but I am not ready to make any decision one way or the other at the moment.

MR. COOPER: I understand.

MR. STEWART: Mr. Farr, by way of clarification of the previous question, you stated in your declaration that you obtained from confidential sources the transcript of Miss Virginia Graham's testimony.

Did you receive the information from one or more of the attorneys of record in this case?

A Yes, I did.

MR. COOPER: Now, if your Honor please, I would like [32] to pursue that, and I would earnestly suggest that the Court continue this matter for the purpose of ordering the attorneys of record in this case to show cause why they should not be compelled to answer whether or not they or any of them furnished a copy of this transcript to Mr. Farr.

Let me suggest why I feel that this is imperative, if your Honor please:

While the press is not entitled to any consideration; they are no different from lawyers or judges or laymen; nevertheless, anyone feels "Why should I be picked on?"

Now, it is apparent from the testimony presently before your Honor, and from what has heretofore been divulged to your Honor in chambers on or about October 8th or 9th, 1970, by Mr. Farr, himself, that the source of this information was one or more of the counsel in this case.

I feel that they, in these circumstances, should be made to answer, as officers of this court, whether or not they did, and I would respectfully, if your Honor please, suggest that your Honor continue this matter for that purpose.

Before I finish counsel would like to make a few observations.

MR. REINHARDT: Your Honor, I prefer to wait until after your Honor considers this question of Mr. Cooper's.

THE COURT: I wanted to ask Mr. Cooper how he would view his client's being asked the question as to whether or not it was one of a specified number of persons, so that we [33] know the person is within a named group. Let me put it another way: whether it is in a group of persons, each of whom is named, so we are not making a wild goose chase.

MR. COOPER: I don't think he can do that, if your Honor please. I can only suggest—

THE COURT: It may be an associate of an attorney in the case. It may be a member of the District Attorney's staff. The District Attorney is the prosecutor

in this case. This could be a wild goose chase. If it could be narrowed down so we know it is one of certain specified persons, that is one thing.

MR. COOPER: Maybe I can reach it this way, with the permission of Court and counsel, may I ask a question?

THE COURT: Yes.

MR. COOPER: Mr. Farr, you have indicated that you have obtained—you have heretofore indicated in chambers that you have obtained copies of this statement of the witness or prospective witness—the then prospective witness, Virginia Graham, from one of the attorneys of record in this case.

By that do you mean one of the counsel who appeared in court in the active participation in the case?

MR. FARR: That is correct.

MR. COOPER: I don't think he can go any further than that, if your Honor please.

THE COURT: Well, that poses a number of problems, as I see it, Mr. Cooper. Apart from the assertion of the privilege against self-incrimination, which I would expect, [34] but even in the absence of that, we have one of the attorneys, for example, who is deceased, Mr. Hughes. We have a number of defense attorneys in and out of the case, a number of prosecution attorneys in and out of the case.

I can appreciate what you are saying and why you are saying it, and it has some merit to it, but I don't want to go off on a wild goose chase to embark on such a procedure.

MR. COOPER: May I suggest this—pardon me for interrupting.

THE COURT: Surely.

MR. COOPER: I think we can eliminate those that

have gone to the great beyond. I am not suggesting a wild goose chase, your Honor.

THE COURT: I still think it should be—

MR. COOPER: I am not playing fast and loose with the Court.

THE COURT: I think before I am willing to embark on some kind of an unknown inquiry, that I would want to know who the members of the group are so that when I finish making the inquiry I would know that somewhere in that group was the person we were looking for.

MR. COOPER: Well, if your Honor please, possibly I can do this, as an officer of the court, I don't think Mr. Farr can go any further than he has, but if your Honor will prepare a list, while I wouldn't eliminate anybody, I think I won't narrow it down so that it is an identifiable individual or individuals—[35]

THE COURT: I am simply saying, if I were to say, for example, "Is the person within this group Mr. Soandso, Mr. Soandso, Mr. Soandso, and so forth, naming the attorneys who have appeared of record for parties in this case, and his answer was yes, I would know somewhere in that group was the person who had the answer.

MR. COOPER: If your Honor please, I am in the dark. I don't know how many persons of record appeared and participated actively in the trial of the case, those that are still alive. I don't know if there are more than six or seven.

THE COURT: I don't think so. I think they have four prosecutors: Mr. Bugliosi, Mr. Stovitz, Mr. Kay and Mr. Musich, and about the same number of defense counsel.

MR. COOPER: The ones that were counsel at that time, not those that came in subsequently, and eliminat-

ing those that are dead, and eliminating those that came into the case subsequent thereto. I think that is identifiable and limited to a comparably small group.

THE COURT: Why not remove the ambiguity by naming the persons in the group?

MR. COOPER: In the first place, I don't know them, if your Honor please.

THE COURT: I can supply you with a list, Mr. Cooper; that is no problem.

MR. COOPER: I might be able to help you. I wouldn't want to have my witness help you.

MR. FARR: I would respectfully decline to narrow it [36] down any further.

THE COURT: Would he be willing to narrow it down as to which side?

MR. COOPER: If your Honor please, no; and I know a very good reason for that.

THE COURT: You don't have to tell me the reason, Mr. Cooper. I assume it is a good one.

MR. COOPER: And I think your Honor eventually will find out. If your Honor could give me the list, I can discuss it with counsel. (Indicating Mr. Stewart)

THE COURT: At that particular time the prosecutors were Mr. Bugliosi, Mr. Musich, Mr. Kay. Mr. Stovitz, I believe, had been relieved as a prosecutor in the case at that time, but I think that his name should be included because I am not certain of that. I don't know exactly what orders or instructions he was under as far as the District Attorney's office is concerned.

The defense counsel at that time were Mr. Kanarek, Mr. Fitzgerald, Mr. Daye Shinn and Mr. Ronald Hughes. Mr. Hughes is the attorney who is now deceased.

MR. COOPER: He can be eliminated, your Honor.

THE COURT: He was deceased in the latter part of November, or December.

MR. COOPER: If Mr. Stovitz was not actively participating in the case in the courtroom at that time, he can be eliminated. You have the rest of them.

THE COURT: I don't understand that statement.

MR. COOPER: Well, your Honor has named them, and I am [37] just suggesting because Mr. Stovitz was not actively participating in the case in the courtroom at that time, his name can be eliminated.

THE COURT: In other words, what you are saying is whoever it was was actively participating in the case in the courtroom.

MR. COOPER: Yes, your Honor.

THE COURT: My recollection is Mr. Stovitz was not at that time.

MR. COOPER: As I say, he can be eliminated.

THE COURT: So where does that leave us?

MR. COOPER: That leaves us with the five I think your Honor has mentioned, five or six.

THE COURT: It would be seven.

MR. COOPER: Bugliosi, Kay, Musich—

THE COURT: And the four defense counsel.

MR. COOPER: That would be it, then, if your Honor please. I couldn't go any further than that.

THE COURT: All right, then, is Mr. Farr willing to answer that question, that the person is among that group of seven?

MR. COOPER: If your Honor please, I don't want to put Mr. Farr on the spot, but I can tell your Honor that it would be within that group.

THE COURT: And you know that to be a fact?

MR. COOPER: It is hearsay with me, if your Honor please.

THE COURT: I understand that, Mr. Cooper, but I am [38] concerned with what kind of hearsay.

MR. COOPER: Well, I believe it to be true, your Honor. If I am wrong, I will ask my client to speak up now. I am not playing games with your Honor.

THE COURT: I understand.

MR. COOPER: You see, if your Honor please, just as you, when you were in the practice of law, wouldn't for anything divulge the confidence of a client, if you believed that to be in confidence, and so also with this witness. I mean, rightly or wrongly, if your Honor please, they have a code of ethics that they rigidly adhere to, and there are reasons for it, and I know your Honor just doesn't want a ruling—

THE COURT: Doesn't want a what?

MR. COOPER: Just doesn't want a ruling for the sake of a ruling.

THE COURT: I wish fervently Mr. Farr's employment was not that of a reporter. That clouds the whole issue. This has nothing to do with the press. It happened to be he is the one; it could easily have been some person who was not a member of the press.

MR. COOPER: I do feel in fairness to the court, in fairness to the press, in fairness to everybody, everyone should be asked the same questions. I don't think that is asking too much, if your Honor please.

THE COURT: Mr. Stewart, do you wish to be heard?

MR. STEWART: I just wish to make a comment, your Honor. I am not attempting to suggest a course of action to the Court, [39] but I think we have a practical problem; that if we call these attorneys to the Bench and ask them the same questions, being experienced criminal attorneys I would expect that the one who

did give the information would take the Fifth Amendment, and consequently the Court may be aware of the individual who committed the contempt and be unable to do anything about it, in order to enforce its contempt order; it would not be required to call back Mr. Farr to the stand to give testimony on the point.

The fact this is an alternative course of action for the Court to adopt does not make the questions previously posed to Mr. Farr any less relevant.

MR. COOPER: Mr. Farr would be back at whatever time that is, your Honor.

THE COURT: I understand that, Mr. Stewart, but there are important principles involved. Sooner or later the question that is now before the court is going to have to be resolved whether by this Court or in some other Court or the Appellate Court, no question about it, because if the contentions of Mr. Farr and his counsel are correct, as I indicated before, I think there is a very serious gap in the law and one which should be remedied in some manner in order to obviate a situation where a person can defeat the judicial process and impair a trial by, again, the simple device of divulging the information which is under a publicity order to a reporter.

But I don't have any objection to avoiding that clash. That really is not the purpose of this proceeding, I repeat for the third time. What I am concerned about is the [40] fact that there appears to be a flagrant violation of the publicity order, and this is an investigation to determine that fact, and if it is a fact, as it now appears to be from Mr. Farr's responses and Mr. Cooper's responses, to find out who the person is.

I have a feeling it won't be long before we are right back in here doing the same thing, but I am willing to give it a try, unless Mr. Stewart can think of some practical problem that would prevent the Court from doing that.

MR. STEWART: I can't think of any practical problem. I think the Court has the authority to—

THE COURT: Or a legal problem.

MR. STEWART: Or a legal problem. It just occurs to me this matter has been on the Court's calendar for the past month. If the attorney was willing to admit to giving out the information, he would have appeared before now and voluntarily done so without the necessity—

THE COURT: I think that would be a little bit too much to expect, human nature being what it is.

MR. STEWART: Perhaps so.

THE COURT: At least the research won't have to be done all over again the second time, if it turns out to be fruitless.

MR. STEWART: I see no legal or practical problems in calling the attorneys to the stand.

THE COURT: I think I will do that. I will accept the suggestion of Mr. Cooper to pursue that avenue so long as it offers any hope of success, with the understanding that we may well be back in here with Mr. Farr again, if it does not produce any results. [41]

So perhaps the best thing to do would be to take the matter off calendar.

Is that agreeable, Mr. Cooper?

MR. COOPER: That will be agreeable. And Mr. Farr will be present, if your Honor please, at any time. All counsel has to do is notify me, and Mr. Farr will be here.

If he wants to serve him with a subpoena, he may, but it isn't necessary; he will be here. He will respond to any direction, a telephone call will bring him here. He only has to come up two flights, if your Honor please.

MR. STEWART: May I make a comment?

THE COURT: Yes.

MR. STEWART: I am concerned by the fact that Mr. Farr indicated it is one or more of the attorneys involved in the case. In other words, he would not limit himself to a single individual.

THE COURT: He indicated that where?

MR. STEWART: In the last question I put to him, your Honor.

THE COURT: I did not understand that. I remember in his declaration he speaks of confidential sources in the plural.

MR. STEWART: That is correct, and I followed up on that on my last question. And it is my understanding he wanted to indicate by his answer it could possibly be more than one.

Consequently, I want to be sure that the list the Court is going to use to call, includes all of the attorneys that might be involved in the violation of the contempt order, [42] not just one.

MR. COOPER: I will notify you by telephone if that is agreeable with you.

MR. STEWART: It is agreeable with me if it is agreeable with the Court.

THE COURT: As to what?

MR. COOPER: If that has all the names on it.

THE COURT: All right. Then with that understanding this matter will go off calendar, and I will request the County Counsel to prepare orders to show cause

with respect to those named attorneys in the group in which it has been represented by Mr. Cooper that the person who gave Mr. Farr the complete statement of Virginia Graham is a member.

MR. COOPER: When it is restored to the calendar, it can be done informally with a telephone call, as far as we are concerned.

THE COURT: Very well, I would like those orders to show cause be served and the matter noticed as soon as reasonably possible, Mr. Stewart.

MR. KANAREK: Your Honor, may I address the Court?

THE COURT: About what, Mr. Kanarek?

MR. KANAREK: I don't know. I have just come in from Department 106. I believe I have been one of a group that's been named, is that correct, your Honor?

THE COURT: I suggest you take it up with Mr. Stewart. He can tell you what happened.

MR. KANAREK: As an officer of the court I was going to ask your Honor have Paul Caruso and Richard Caballero also [43] made part of the group, your Honor, if I may, because they represented Susan Atkins in these proceedings that we are speaking of. I don't know anything about it, except I just came in.

THE COURT: Very well, this proceeding is adjourned. [44]

Superior Court of the State of California, fo
County of Los Angeles.

Department No. 104.

Hon. Charles H. Older, Judge.

The People of the State of California, Plaintif
Charles Manson, et al., Defendants. No. A253156.

State of California, County of Los Angeles——s

I, J. Hollombe, Official Reporter of the Sup
Court of the State of California, for the County o
Angeles, do hereby certify that the foregoing 44
comprise a full, true and correct transcript o
proceedings had and the testimony given in the m
of the above-entitled cause had on June 3, 1971.

Dated this 7th day of June, 1971.

J. Hollombe
Official Reporter [45]

Contempt Hearing Reporter's Transcript June 30, 1971.
In the Matter of the Contempt of William Farr.

Superior Court of the State of California, for the County of Los Angeles.

Department No. 104.

Hon. Charles H. Older, Judge.

The People of the State of California, Plaintiff, vs. Charles Manson, et al, Defendants. No. A 253,156.

REPORTER'S TRANSCRIPT

WEDNESDAY, JUNE 30, 1971

APPEARANCES:

William F. Stewart, Deputy County Counsel.

J. Hollombe, Official Reporter.

LOS ANGELES, CALIFORNIA, WEDNESDAY, JUNE 30, 1971, 10:00 A.M.

THE COURT: People versus Manson, et al. Are you ready, Mr. Stewart?

MR. STEWART: Yes, your Honor. Your Honor, at this time I would like to make a motion to exclude witnesses.

MR. KANAREK: Your Honor, may I be heard?

THE COURT: Yes.

MR. KANAREK: Your Honor, I filed an affidavit of prejudice under 170.6, as I believe Mr. Shinn and Mr. Fitzgerald also have, I believe, your Honor. We would ask your Honor to disqualify himself from hearing any of these matters.

THE COURT: Do you have the returns of service?

MR. STEWART: Yes, I gave them to the clerk this morning, your Honor.

MR. KANAREK: May I have a ruling on the affidavit, your Honor?

THE COURT: Yes. I don't think the provisions of 170.6 apply to this type of situation. This is an investigation by the Court into what appears so far in the proceedings to be a violation of the publicity order, and as such the attorneys were subpoenaed as witnesses in the case, and I don't think as witnesses you are entitled to the benefit of 170.6 of the Code of Civil Procedure.

So the declarations will be stricken.

MR. KANAREK: But they may remain with the file, is that correct, your Honor?

THE COURT: That is correct. [2]

MR. KANAREK: I also have a motion to quash the purported process, your Honor.

The process states an action now pending in said Superior Court.

This Court has lost jurisdiction of this case. I would ask your Honor to consider a case, Schultz versus Superior Court. I have it as 159 Pacific 2nd, 417, and it is clear. I will offer the case to the Court.

I am reading now at page 418. It is a decision in which the Court says:

"Furthermore, if Section 581A had never been enacted, the Court would be powerless to make orders in the action which had by virtue of the plaintiff's appeal been transferred to the Supreme Court."

I am summarizing. I am reading this one sentence. I think that this case speaks much more eloquently than I can.

The Court has lost jurisdiction. There is no such case. The case is, upon the sentence and judgment—

the Court has no power whatsoever to institute these proceedings.

Furthermore, the Superior Court does not engage in an investigatory activity. The Superior Court has certain functions, and I respect this court. It is a constitutional court—

THE COURT: Let's not prolong it, Mr. Kanarek. You are talking about something entirely different. This is an investigation by the Court into a violation of an order. It appears, at least on the face of what we have so far, [3] that the violation was by one of the attorneys in the case. As such, the Court does have the right to investigate what could be a possible contempt in violation of its order.

MR. KANAREK: But this process, your Honor, is illegal. I make a motion to quash this purported subpoena as to myself, Mr. Shinn and Mr. Fitzgerald because there is no action now pending in said Superior Court.

We live by the law, your Honor, and this case is outside the jurisdiction of this Court.

THE COURT: All right; I have your points in mind, Mr. Kanarek. But I don't think there is the slightest bit of validity to them.

MR. KANAREK: Would your Honor read Schultz versus Superior Court?

THE COURT: There is no question about the law as applied to the facts that you are talking about. But that is not this case.

MR. KANAREK: Your Honor, this was a contempt matter. This was a contempt matter in which they quashed—

THE COURT: Let me see the opinion.

MR. KANAREK: Yes, your Honor.

(Volume handed to the Court)

THE COURT: Well, this case has nothing whatever to do with the present proceeding. The facts are totally different, Mr. Kanarek, as you must be aware.

MR. KANAREK: It is a contempt, and when the Court loses jurisdiction, it loses jurisdiction. These matters—

THE COURT: The motion to quash will be denied. [4]

MR. KANAREK: As to each subpoena?

THE COURT: As to each subpoena.

MR. KANAREK: Then, your Honor, I ask the Court to disqualify itself because the Court's credibility is in issue, and under Evidence Code 703, I refer now, because I believe the Court has received also matters pertaining to Virginia Graham.

The Court received, I believe, some of these, and the Court—and I will refer to Evidence Code 703. Evidence Code 703 says:

> "Before the judge presiding at the trial of an action may be called to testify in that trial as a witness, he shall, in proceedings held out of the presence and hearing of the jury, inform the parties of the information he has concerning any fact or matter about which he will be called to testify."

Now, I am sure your Honor is familiar with 703, and the rest of it.

The fact is that this Court, because Bill Farr says that certain people, a certain group of people did something, does not mean that is the be all and end all of creation. Or because somebody else said it.

There has to be a fair judicial hearing, and your Honor also had these matters in his possession, and so your Honor may well—

THE COURT: What matters?

MR. KANAREK: The statements of Virginia Graham. I think [5] the District Attorney's office supplied your Honor with copies, if I am not mistaken. And so your Honor may well be a person who will have to take the witness stand and testify under oath or give your declaration, or in any way—the Court's credibility is in issue—will be in issue.

THE COURT: All right. That will be enough of that argument, Mr. Kanarek. Do you have anything else?

MR. KANAREK: Pursuant to Evidence Code 703 we object to the Court hearing anything in connection with this, because it is our belief that the Court will conceivably—certainly be a witness.

THE COURT: Are you making some kind of a motion now, or an objection—what is it, so I can rule on it?

MR. KANAREK: My motion is that the Court disqualify itself, send this matter—although we do not concede any jurisdiction, it is our belief that the Court should disqualify itself, and furthermore the Court should tell us in pursuance to Evidence Code 703 what the Court knows, if anything other than the papers that are before the Court.

And I do move the Court—

THE COURT: Your motion will be denied. Do you have anything further?

MR. KANAREK: Yes, your Honor.

Now, furthermore, this is in the nature of a criminal proceeding. The law does not—

THE COURT: This is in the nature of an investigation at this stage.

MR. KANAREK: Right, your Honor, and the law does not [6] provide for discovery in criminal matters, which your Honor is doing.

Your Honor is conducting a discovery proceeding without any basis or jurisdiction. The law does not contemplate that. There is no precedence in the law for the Court to do what it is doing because your Honor is, as we say, attempting to obtain evidence.

THE COURT: Are you making a motion or an objection of some kind?

MR. KANAREK: Yes, your Honor.

THE COURT: What is it?

MR. KANAREK: The motion is that the Court not proceed because of the fact the Court is proceeding illegally without jurisdiction, just to call people in a fishing—

THE COURT: That motion will be denied. Is there anything further?

MR. KANAREK: Yes, your Honor.

It was first brought to the Court's attention, I believe, on or about October 8th, 1970, concerning matters that are—that your Honor is now alluding to.

The Court has lost jurisdiction by virtue of the fact that a great time period has elapsed since the Court first had reason to believe that there was any kind of a contempt in connection with the Virginia Graham matter, and your Honor, therefore, on that basis, has no jurisdiction to proceed.

It is our motion that the Court not proceed.

THE COURT: That motion is denied. [7]

MR. KANAREK: Well, your Honor, I have here declarations of Mr. Shinn and myself that your Honor

is proceeding, and wants discovery as to pre-trial publicity, it is the declaration of I. A. Kanarek.

Request that Richard Caballero, Attorney at Law—

THE COURT: You may file that and serve a copy on the County Counsel, Mr. Kanarek, if you like.

Do you have any other objections or motions, so we can proceed?

MR. KANAREK: Yes, your Honor.

Your Honor, Mr. Farr is not present, I don't believe.

THE COURT: Do you have anything else, Mr. Kanarek?

MR. KANAREK: I make the motion Mr. Farr be present before we proceed.

THE COURT: Let's proceed. Mr. Stewart.

MR. SHINN: May I be heard, your Honor, briefly.

THE COURT: If you are going to repeat what Mr. Kanarek said, I don't want to hear that, Mr. Shinn. If you have something in addition I will hear it.

MR. SHINN: Yes, I do have, your Honor. I believe that the Court here is guilty of laches, your Honor.

THE COURT: He has already raised that question.

MR. SHINN: I have a different citation, your Honor.

THE COURT: Give the citation.

MR. SHINN: In re Foode, 76 Calif. 43, 18 Pacific 678

The case held that the Court loses jurisdiction if it does not pursue the act of contempt immediately.

Now, in this case the Court brought the action [8] fifty days later, after the trial was terminated. The Court held there the Court lost jurisdiction.

Now, in Curron vs. Superior Court, 72 Cal Ap 258. Here the Court, I believe, after the case terminated, two or three days later, brought the act of contempt.

But the Court in that case, for the record, held during the trial that the contempt procedures would be held after termination of the trial.

I believe in this case there is nothing in the record indicating that this Court was going to proceed with its contempt proceedings against Bill Farr, plus the fact the case was terminated on April 19, 1971; I believe the action against Mr. Farr was brought on June 9th.

I believe the Court is therefore guilty of laches, and has lost jurisdiction in this case.

THE COURT: All right, anything further?

MR. SHINN: That is all.

THE COURT: Let's proceed, Mr. Stewart.

MR. STEWART: I believe I had a motion pending, your Honor, regarding the exclusion of witnesses.

THE COURT: All right. Whom did you intend to call first?

MR. STEWART: Mr. Kay.

THE COURT: All right. Then I will ask the other gentlemen who have been subpoenaed to remain outside in the hall until they are called, and not to discuss their testimony with each other. [9]

THE CLERK: Raise your right hand, please. Will you please repeat after me:

I do solemnly swear—

THE WITNESS: I do solemnly swear—

THE CLERK: —that the testimony I may give—

THE WITNESS: —that the testimony I may give—

THE CLERK: —in the cause now pending—

THE WITNESS: —in the case now pending—

THE CLERK: —before this Court—

THE WITNESS: —before this Court—

THE CLERK: —shall be the truth—
THE WITNESS: —shall be the truth—
THE CLERK: —the whole truth—
THE WITNESS: —the whole truth—
THE CLERK: —and nothing but the truth—
THE WITNESS: —and nothing but the truth—
THE CLERK: —so help me God.
THE WITNESS: —so help me God.

THE CLERK: Be seated please. Would you please state and spell your name.

THE WITNESS: Stephen R. Kay. S-t-e-p-h-e-n; middle initial R. Last name: K-a-y.

STEPHEN R. KAY,

called as a witness, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. STEWART: [10]

Q Mr. Kay, were you an attorney of record in the case of People versus Manson on or about October 8, 1970?

A Yes, I was.

Q At that time you were familiar with the Court's order re publicity entered in December of 1969.

A I have never read that order. To answer your question, I had heard about it, but I still had never read the actual order.

I read the publicity order that Judge Keene issued, but I never read any other.

Q Thank you. Mr. Kay, let me show you an exhibit entitled the complete statement of Virginia Graham, taken on October 5, 1970.

A Yes, I took the statement.

Q You took that statement from Virginia Graham on that date.

A That is correct. That is when I took it.

Q Did you make any copies of that statement?

A Yes, I made a copy, the original for the Court. I made one copy that Mr. Musich and I shared; I made a copy for Mr. Bugliosi; I made a copy for the three defense attorneys, and I made a copy for Mr. Kanarek.

Q Were there any other copies made other than the ones you just testified to?

A No; also there was a second statement; there was a shorter statement which was that Virginia was going to testify to at the trial.

Q I am referring now to the exhibit in front of you, [11] the complete statement of Virginia Graham.

A No other copies other than what I testified to.

Q After you had the copies made what did you do with them?

A I picked up the copies—it seems to me they were Xeroxed, other than the original. I am not sure about it now. But I think I picked it up at the Xeroxing room, and I kept the copy for myself and Mr. Musich. Mr. Musich never actually got a copy; we shared my copy, and he took the statement of Roni Howard, and I shared his copy.

I took the other copies and gave them all to Mr. Bugliosi.

Q At anytime subsequent thereto did you make a copy of your personal copy that you retained?

A No.

Q At any time during the case, Mr. Kay, did you discuss with Mr. Farr or any other newspaper reporter

the contents, nature or the substance of the testimony contained in that exhibit in front of you?

A Never.

Q Did you inform or communicate to anyone during the course of the trial either orally or in writing the contents, nature or substance of the exhibit in front of you?

A You mean other than the actual attorneys in the case?

Q That's right.

A I think Attorney Steinberg, who was Virginia Graham's attorney. I think we discussed the statement. He was [12] Virginia Graham's attorney.

Q Did you give him a copy of the statement?

A No, but when I took the statement he was in and out of the office. He and his partner had come to kind of shepherd Virginia around. He might have seen the statement. I don't know if he ever saw the complete one.

Q In any case you did not give him a copy of the statement.

A No.

Q Mr. Kay, did you give, transfer or release in any way possession of that transcript either by yourself or acting in conjunction with somebody else to Mr. Farr or to any of his associates or representatives?

A Absolutely not.

Q At any time during the trial?

A At no time, even to this day.

Q Did you permit Mr. Farr to read the transcript or did you show it to him at anytime during the trial?

A No. As a matter of fact, at that time I really did not even know Mr. Farr that well. The only reporter I was really on speaking relationship with at

that time was John Kendall. He is from the Los Angeles Times. I had only been on the case about a month.

I think I was on the case September 8th, and the reporters did not pay too much attention to me other than Mr. Kendall. We had a speaking relationship, but I didn't even know Mr. Farr that well.

Q Did any associate or friend or messenger of yours [13] give, transfer or release the transcript of Virginia Graham's testimony on October 5th to anyone other than the attorneys involved in the case?

A Well, not to my knowledge. I cannot state that as a fact, but if they did I don't know about it.

Q Did you cause to leave or did you leave in fact a copy of the transcript of Virginia Graham, the exhibit in front of you, anyplace for Mr. Farr or anyone else to pick up?

A No, I did not. The transcript was in my briefcase. It was kept in my briefcase and my briefcase was in my office.

Now, I don't know if anybody came in, but I did not intentionally leave it anywhere for anybody to look at it other than myself and Mr. Musich.

Q Where is the copy of your transcript now?

A I really don't know. I seem to remember, and it is kind of a vague recollection that it was either with that statement or with the statement of Roni Howard in chambers.

That in chambers Judge Older asked us to keep our statements here in court, and that we weren't supposed to take them out, and to turn them in to Mr. Darrow.

And I can remember Mr. Shinn objecting, saying that that was not enough time for him; he couldn't come into court all the time. And whether we turned them in or what, I don't know.

Q In any case, prior to October 8th, 1970, was the [14] transcript, your personal copy of it, of the transcript always in your possession?

A Well, either in my possession or Mr. Musich's. Now, it was in my possession except when we were in chambers, and then Mr. Musich and I shared it. I don't think Mr. Musich ever took it.

Other than Mr. Musich it wasn't in anybody's possession to my knowledge other than my own.

Q Subsequent to the trial have you been acquainted with Mr. Farr?

A Yes, since he became an employee of the District Attorney's office.

Q Did he at any time state to you who he got the transcript from?

A No, but I did ask him, and he stated to me that he wouldn't even tell Grant Cooper who gave it to him.

Q Did you observe, Mr. Kay, anyone, including the defendants and the attorneys in this case, give to Mr. Farr or anyone a transcript of Virginia Graham's testimony on October 5th?

A No.

Q Has anyone stated to you that he gave a copy of the transcript of Virginia Graham's testimony to Mr. Farr?

A No.

Q Has anybody ever reported or stated to you that they saw someone give a copy of Virginia Graham's testimony on October 5th, the exhibit in front of you, to someone?

A No. [15]

Q Did Mr. Farr ever promise or state to you he would not divulge the source of any information that you would give him?

A I never gave Mr. Farr any information about the case.

MR. STEWART: I have no further questions, your Honor.

THE WITNESS: Does the Court have any questions?

THE COURT: Just one, Mr. Kay:

You say that Mr. Farr told you that he wouldn't or hadn't told Grant Cooper who gave him the Virginia Graham statement?

A Yes, I asked him. I said, you know, "Bill, tell me who it was."

He said "I wouldn't even tell my attorney that."

THE COURT: When was this statement made by Mr. Farr approximately?

A I would guess probably about a month ago. It was before his hearing in the Court.

THE COURT: It was before Mr. Farr's hearing in this Court when Mr. Cooper was present representing him?

A Right. Right.

THE COURT: Anything further?

MR. STEWART: No, your Honor.

THE WITNESS: Thank you.

THE COURT: Thank you.

MR. KAY: Your Honor, may I be excused, or do you want me to wait in the hall?

THE COURT: Do you see any necessity?

MR. STEWART: I see no necessity. [16]

THE COURT: You are excused.

MR. STEWART: Mr. Bugliosi, please.

THE COURT: I have excused Mr. Kanarek to go back to Department 106, with the understanding when

he is required we will simply call over there and he will be excused from that Department.

MR. STEWART: Thank you.

THE CLERK: Will you please repeat after me: I do solemnly swear—

THE WITNESS: I do solemnly swear—

THE CLERK: —that the testimony I may give—

THE WITNESS: —that the testimony I may give—

THE CLERK: —in the cause now pending—

THE WITNESS: —in the cause now pending—

THE CLERK: —before this Court—

THE WITNESS: —before this Court—

THE CLERK: —shall be the truth—

THE WITNESS: —shall be the truth—

THE CLERK: —the whole truth—

THE WITNESS: —the whole truth—

THE CLERK: —and nothing but the truth—

THE WITNESS: —and nothing but the truth—

THE CLERK: —so help me God.

THE WITNESS: —so help me God.

THE CLERK: Just be seated, please. Would you state and spell your name.

THE WITNESS: Vincent Bugliosi. B-u-g-l-i-o-s-i. [17]

VINCENT BUGLIOSI,

called as a witness, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. STEWART:

Q Mr. Bugliosi, on or about October 8th, 1970, were you an attorney of record in the case of People versus Manson?

A Yes.

Q At that time were you familiar with the Court's order re publicity and amendments thereto, made and entered in December of 1969?

A Yes.

Q Mr. Bugliosi, I show you an exhibit of this case, entitled Complete Statement of Virginia Graham, taken on October 5th, 1970.

At anytime during the course of the trial did you receive a copy of that transcript?

A Yes, I did.

Q Did you receive those from Mr. Kay?

A Yes.

Q How many copies did you receive?

A Well, I received—Steve brought up six or seven copies to court, and I know I got one copy, and either he or I, I forget which, distributed the other copies to the defense attorneys. I forget.

Q You cannot recall whether you distributed the copies to the defense attorneys? [18]

A No, I don't remember. It would either be he or I. I remember I got a copy and he did have six or seven of them there.

Q Do you recall if there were any copies left over after they were distributed?

A I think we all got a copy and that was it. The Court got a copy; all prosecutors and all defense attorneys got a copy.

Q Do you know if any attorney received more than one copy of the testimony?

A I don't believe so.

Q You received only one copy?

A To my knowledge I did, yes.

Q You presently have your copy with you?

A No.

Q Do you know what happened to it?

A No, I probably have it. I am sure I have it in the tubs down in my office.

Q Subsequent to your receipt of the copy of the transcript in front of you, did you copy or reproduce any portion thereof?

A No.

Q Do you know whether any copy or reproduction was made of your personal copy?

A Not that I am aware of. I doubt it.

Q Now, at anytime during the course of the trial, Mr. Bugliosi, did you discuss with Mr. Farr or any other newspaper reporter the contents, the nature or the substance [19] of the testimony contained in the transcript in front of you?

A No, not the contents or the nature. I did discuss with Bill Farr the fact that he supposedly had a copy of this.

Q When did you discuss that with him?

A I think it was on the morning that Bob Steinberg appeared in court. I heard out in the hall that Bill Farr had a copy of Virginia Graham's statement.

I approached Bill and I said I heard he had a copy of the statement, and I asked him if he did in fact have a copy.

He said he did. He said he intended to tell me about it. I asked him from whom he got the statement. He said he could not say, and then I recall telling him that obviously he should not publish the statement.

If I recall correctly he was noncommital. He didn't say one way or the other.

Q Who told you Farr had a copy?

A I heard it out in the hall. They were talking about it, probably reporters.

Q Did you inform or communicate to anyone other than the attorneys involved in this case or personnel of the District Attorney's office any of the contents or substance of the transcript of Virginia Graham?

A No.

Q Did any agent, associate or messenger of yours or anyone acting under your direction, suggestion or advice communicate to anyone the contents of the transcript of Virginia Graham? [20]

A No.

Q Did you at any time give, transfer, release or in any way relinquish possession of the transcript of Virginia Graham that is in front of you as an exhibit, or cause to have transferred or released, either acting alone or in connection with other parties, any portion of that transcript to Mr. Farr or to any of his associates?

A No, definitely not.

Q Did you at any time permit Mr. Farr to read the transcript?

A No, definitely not.

Q Did you ever show it to him?

A No.

Q Did you leave a copy or have caused to have left a copy of the transcript in any place for Mr. Farr or an associate or messenger to pick up?

A No.

Q Did you at any time observe anyone, including the attorneys involved in the case, and the defendants, give to Mr. Farr or to anyone a transcript of Virginia Graham's testimony on October 5th?

A No, I did not.

Q Did anyone state to you he gave a copy of the transcript to Mr. Farr—a copy of the transcript of Virginia Graham's testimony?

A No.

Q Did anyone ever report or state to you that they saw someone give a copy of the transcript to Mr. Farr? [21]

A Reporter, you say?

Q No, report or state to you that they saw someone give a copy of the transcript of Virginia Graham's testimony to Mr. Farr?

A No. Bob Steinberg, on the same day that I told you I had this conversation with Bill Farr, he came to court and he told me that he wanted to talk to Judge Older about a violation of the gag order involving the statement, and I remember that I asked Judge Older if we could approach the bench, and I think all the attorneys did.

At that time Bob Steinberg made certain statements to Judge Older. I believe it is in the transcript.

Q Did Mr. Steinberg ever state to you that he knew who transferred the transcript to Mr. Farr?

A No, I did not have any personal discussion with him other than that there had been a violation of the gag order concerning the statement, and I believe he told Judge Older, I believe it is in the transcript, that Bill Farr told him that it had been a defense attorney. This is in the transcript.

Q Other than what was in the transcript you had no discussion with Mr. Steinberg regarding the transcript?

A No.

Q At anytime did Mr. Farr ever promise you or state to you he would not divulge the source of any information that you would give him concerning the trial?

A No, I don't recall.

Q Mr. Bugliosi, do you know who gave the transcript [22] to Mr. Farr?

A No, I do not.

MR. STEWART: I have no further questions, your Honor.

THE COURT: You are excused, Mr. Bugliosi.

MR. STEWART: Mr. Musich.

THE CLERK: Raise your right hand. Would you please repeat after me:

I do solemnly swear—

THE WITNESS: I do solemnly swear—

THE CLERK: —that the testimony I may give—

THE WITNESS: —that the testimony I may give—

THE CLERK: —in the cause now pending—

THE WITNESS: —in the cause now pending—

THE CLERK: —before this Court—

THE WITNESS: —before this Court—

THE CLERK: —shall be the truth—

THE WITNESS: —shall be the truth—

THE CLERK: —the whole truth—

THE WITNESS: —the whole truth—

THE CLERK: —and nothing but the truth—

THE WITNESS: —and nothing but the truth—

THE CLERK: —so help me God.

THE WITNESS: —so help me God.

THE CLERK: Be seated. Would you state and spell your name, please.

THE WITNESS: Donald A. Musich, M-u-s-i-c-h. [23]

DONALD A. MUSICH,

called as a witness, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. STEWART:

Q Mr. Musich, on or about October 8, 1970, were you an attorney of record in the case of People versus Manson?

A Yes, I was.

Q That was for the District Attorney?

A That is correct.

Q At that time were you familiar with the Court's order re publicity entered in December of 1969?

A Yes, I was.

Q On the rail in front of you, Mr. Musich, is an exhibit in this case which is the transcript of the complete testimony of Virginia Graham on October 5th, 1970. Did you receive a copy of that transcript during the course of the trial?

A I don't believe I did. I believe I used Steve Kay's; at the time or just prior to that I had taken Roni Howard's statement. I was more concerned with that.

Did you ever make a copy of Steve Kay's transcript for your own benefit?

A No, I did not.

Q Do you know if anybody reproduced or copied the statement Mr. Kay had?

A Not to my knowledge. I think copies were reproduced for defense counsel for purpose of use in chambers with [24] the Judge, if I am not mistaken.

Q Mr. Musich, do you know Mr. Farr?

A Yes, I do.

Q At any time during the course of the trial did you discuss with Mr. Farr or with any other newspaper reporter the contents, nature or substance of the testimony of Virginia Graham that is contained in that transcript in front of you?

A No, I did not.

Did you discuss it with anyone else except employees of the District Attorney's office?

A No, I did not.

Q At anytime, Mr. Musich, did you transfer or release or otherwise relinquish possession of the transcript of Virginia Graham's testimony on October 5th?

A No, I didn't.

Q To anyone?

A No, I didn't have a copy, to my knowledge.

Q Whether your personal copy or anybody's copy.

A No, any copy. I didn't have a copy in my possession to my knowledge.

Q Did you at any time permit Mr. Farr or anyone to read the transcript of Virginia Graham's testimony?

A No.

Q Did Mr. Farr ever tell you from whom he got the transcript?

A No, he did not.

Q Did you ever observe anyone, including the attorneys, and defendants in the case, give to Mr. Farr or to anyone a [25] transcript of Virginia Graham's testimony?

A Not to my knowledge, no.

Q Has anyone ever stated to you that he gave a copy of Virginia Graham's testimony to Mr. Farr or anyone?

A No.

Q Did anyone ever report or say to you that they saw someone give Mr. Farr a copy of the transcript?

A No.

Q Did you ever talk with Mr. Steinberg, the attorney for Miss Graham?

A He was in the office at the time with his client, with Virginia Graham before she was to testify. Any conversations that I had with him would have been with other prosecuting attorneys present.

Q He never stated to you that he knew who gave the transcript to Mr. Farr?

A Oh, no. Nothing in that line.

Q Do you know who gave the transcript to Mr. Farr?

A No, I do not.

MR. STEWART: I have no further questions.

THE COURT: You are excused, Mr. Musich.

We will take a fifteen minute recess at this time.

(Whereupon at 10:40 A. M. a recess was taken to 10:58 A. M., at which time the following proceedings were had:)

THE COURT: You may proceed, Mr. Stewart.

MR. STEWART: Call Mr. Shinn. [26]

THE CLERK: Would you please repeat after me:

I do solemnly swear—

THE WITNESS: —I do solemnly swear—

THE CLERK: —That the testimony I may give—

THE WITNESS: —that the testimony I may give—

THE CLERK: —in the cause now pending—

THE WITNESS: —in the cause now pending—

THE CLERK: —before this Court—

THE WITNESS: —before this Court—

THE CLERK: —shall be the truth—

THE WITNESS: —shall be the truth—

THE CLERK: —the whole truth—
THE WITNESS: —the whole truth—
THE CLERK: —and nothing but the truth—
THE WITNESS: —and nothing but the truth—
THE CLERK: —so help me God.
THE WITNESS: —so help me God.
THE CLERK: Be seated, please. Would you please state and spell your name.
THE WITNESS: Daye Shinn, D-a-y-e S-h-i-n-n.

DAYE SHINN,

called as a witness was examined and testified as follows:

DIRECT EXAMINATION

BY MR. STEWART:

Q Mr. Shinn, on or about October 8th, 1970, were you attorney of record in the case of People versus Manson? [27]

A Yes, I was representing Susan Atkins.

Q At that time were you familiar with the Court's order re publicity entered in December, 1969?

A I was.

Q On the rail in front of you, Mr. Shinn, is a copy of the transcript of the testimony of Virginia Graham, on October 5th, 1970, which is an exhibit in this hearing.

Did you receive a copy of that transcript?

A If this is the edited statement of Virginia Graham I did receive a copy.

Q That is the complete statement of Virginia Graham, it says on the top. Did you receive a copy of the complete statement of Virginia Graham, taken October 5, 1970?

A I believe I did.

Q Whom did you receive it from?

A I believe one of the deputies district attorney handed it to me. I believe Mr. Kay, I believe. I am not sure.

Q How many copies of that transcript did you receive?

A I believe one copy.

Q You have your copy now?

A I don't have it with me now. It is in my office.

Q It is in your office?

A Yes.

Q At any time during the course of the trial did you copy or reproduce—

A No, I did not.

MR. STEWART: I haven't finished my sentence. [28]

THE WITNESS: I'm sorry.

Q BY MR. STEWART: Did you copy or reproduce or cause to be copied or reproduced that transcript or any portion thereof?

A No, I did not.

Q Did you at any time summarize the contents thereof in writing?

A No, I did not.

Q Do you know whether any copy or reproduction was made of your copy of the transcript given to you by Mr. Kay or anybody?

A Anyone from my office?

Q Anybody, whether from your office or anybody else.

A That I don't know.

Q Did anybody in your office make a copy?

A No.

Q And you did not advise anyone to make a copy of the transcript?

A That is correct.

Q Now, at any time during the course of the trial did you discuss with Mr. Farr or with any other newspaper reporter the contents, the nature or the substance of the testimony contained in the transcript of the testimony of Virginia Graham that is in front of you?

A No, I did not.

Q You did not even discuss it with your client?

A I discussed it with my client, but not with Mr. Farr. I believe the question was, "Did you discuss with Mr. [29] Farr."

Q Or any other reporter.

A I did not.

Q Did you inform or communicate the contents of that transcript to anyone, either orally or in writing at any time during the course of the trial?

A I believe I discussed it with Susan Atkins, and probably with co-counsel.

Q With Mr. Kanarek and Mr. Fitzgerald?

A Yes.

Q Other than your client, co-counsel, Mr. Kanarek and Mr. Fitzgerald, you did not discuss the contents of that transcript at anytime during the course of the trial?

A That is correct.

Q Do you know if your client communicated or gave to anyone the contents of the transcript?

A I don't know that. I have no knowledge of it.

Q You do not know?

A I don't know. I doubt it very much. I don't have any knowledge of whether or not she discussed this matter with someone in the Sybil Brand Institute For Women. I don't know.

Q Did you give her a copy of the transcript at any time?

A No.

Q Do you recall showing her a copy of it?

A I don't recall. I may have showed her a copy during the trial. [30]

Q But you did not relinquish possession of that transcript at any time?

A No, I did not.

Q Now, did you give, transfer or in any way relinquish possession or cause to have transferred either by yourself or acting in connection with other parties the transcript of the testimony of Virginia Graham, October 5, 1970, to Mr. Farr?

A Definitely not.

Q To any party?

A Definitely not.

Q Did you at any time permit Mr. Farr to read the transcript?

A Definitely not.

Q Did you ever show it to him?

A No.

Q Did any associate, friend or representative or messenger of yourself give the transcript of Virginia Graham's testimony to anyone?

A No.

Q Did you ever leave or cause a copy of Virginia Graham's transcript to be left at any place for Mr. Farr or anyone else to pick up?

A No.

Q Or did you instruct an associate or client to do the same?

A No.

Q Did Mr. Farr ever—you know Mr. Farr, do you? [31]

A Sure, I know Mr. Farr.

Q Did Mr. Farr ever tell you whom he got the transcript from?

A No.

Q Did you ever have a discussion with Mr. Farr where he promised you or stated to you he would not divulge the source of any information that you would give him concerning the trial of the case?

A No.

Q Did you observe anyone, including the attorneys and the defendants in this case give to Mr. Farr or to anyone a transcript of Virginia Graham's testimony?

A No.

Q Did you observe anyone, again including the defendants and the attorneys, discuss or communicate the contents of the transcript of Virginia Graham's testimony to anyone?

A No.

Q I didn't get your answer, sir.

A No.

Q Has anyone stated to you that he or she gave a copy of the transcript of Virginia Graham's testimony to Mr. Farr?

A No.

Q Or to anyone?

A No.

Q Has anyone ever reported or stated to you that they saw someone give a copy of the transcript to Mr. Farr?

A No. [32]

Q Do you know who gave a transcript to Mr. Farr?

A No.

Q Has anybody ever stated to you that they know who gave the transcript to Mr. Farr?

A No.

Q And you state that your copy of the transcript given to you by Mr. Kay is still in your possession?

A Yes.

MR. STEWART: I have no further questions.

THE COURT: Do you know how Mr. Farr obtained the transcript of the Graham statement?

A No, I don't, your Honor.

THE COURT: All right, you are excused, Mr. Shinn.

MR. SHINN: Thank you.

MR. STEWART: My next witness is Mr. Kanarek, your Honor.

THE CLERK: Raise your right hand, please.

MR. KANAREK: I wonder if I am entitled to witness fees, your Honor. I have not been paid any witness fees.

THE COURT: Swear the witness.

THE CLERK: Would you please repeat after me.

THE WITNESS: Yes.

THE CLERK: I solemnly swear—

THE WITNESS: I solemnly swear—

THE CLERK: —that the testimony I may give—

THE WITNESS: —that the testimony I may give—

THE CLERK: —in the cause now pending—

THE WITNESS: —in the cause now pending—

THE CLERK: —before this Court— [33]

THE WITNESS: —before this Court—

THE CLERK: —shall be the truth—

THE WITNESS: —shall be the truth—

THE CLERK: —the whole truth—

THE WITNESS: —the whole truth—

THE CLERK: —and nothing but the truth—

THE WITNESS: —and nothing but the truth—

THE CLERK: —so help me God.

THE WITNESS: —so help me God.

THE CLERK: Be seated please. Would you please state and spell your name.

THE WITNESS: I. A. Kanarek, K-a-n-a-r-e-k.

I. A. KANAREK,

called as a witness, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. STEWART:

Q Mr. Kanarek, were you an attorney of record in the case of People versus Manson on October 8, 1970?

A Yes, I was.

Q And whom did you represent, Mr. Manson?

A Charles Manson.

Q At that time were you familiar with the Court's order re publicity entered in 1969, and the amendments thereto?

A Yes.

Q On the rail in front of you, Mr. Kanarek, is a transcript of the complete testimony of Virginia Graham, [34] taken on October 5th, 1970. Did you receive a copy of that transcript at any time during the course of the trial?

A Yes.

Q Can you recall when you received it and whom you received it from?

A No, but I believe it was Stephen Kay or one of the prosecutors.

Q And you received it on or about October 5th, the date the testimony was taken?

A I can't say what date it was.

Q But it was prior to the time Miss Graham actually testified in open court?

A Yes.

Q How many copies did you receive, sir?

A I presume one.

Q But you cannot recall the exact number?

A No.

Q You still have your copy?

A I presume I do.

Q When was the last time you saw it?

A Probably months and months ago.

Q But you do not recall turning it into the Court or to any other party?

A Why don't you ask me directly if I gave it to Bill Farr? I did not.

Q I will get to it, Mr. Kanarek, Just answer the question.

A All right. [35]

Q Now, at any time during the course of the trial, did you copy or reproduce or cause to have copied or reproduced any portion of the transcript of Virginia Graham's testimony?

A No. Are you speaking in terms of Xeroxing or something like that?

Q Xeroxing.

A I may have in terms of writing it out, or something like that.

Q Can you recall whether you wrote out the complete transcript or just excerpts?

A I may have written out excerpts.

Q Is this to aid you in the cross-examination?

A Yes. And in preparation of the case.

Q You do not recall Xeroxing the complete transcript?

A No.

Q Do you know whether or not any Xerox or reproduction of your personal copy of the transcript was made by anybody else?

A I certainly believe it has not been.

Q At anytime during the course of the trial did you discuss with Mr. Farr or any other newspaper reporter the contents, nature or substance of the transcript of Virginia Graham's testimony?

A No.

Q Did you discuss the nature or substance of that testimony with anybody?

A Well, based on the attorney-client privilege I [36] refuse to answer as to Mr. Manson, and I may have discussed it with other lawyers, but I certainly—as to Mr. Farr the answer is absolutely no.

Q But you may have discussed it with attorneys, other attorneys during the trial?

A Yes, we discussed it with Judge Older. I think Judge Older had a copy of the transcript provided for him. In fact I would welcome the Court—

Q Do you know whether your client communicated or gave to anyone the contents of the transcript of Virginia Graham's testimony?

A No, I do not.

Q Did you give him a copy of the testimony?

A No.

Q Did any agent, associate or messenger of yours or anyone acting under your suggestion or direction, communicate to anyone the substance or nature of the testimony of Virginia Graham?

A Say that again.

THE COURT: Read the question.

(Whereupon the reporter reads the record.)

THE WITNESS: Not to my knowledge.

Q BY MR. STEWART: You did not advise anybody to communicate?

A No. As a matter of fact, I might state that I got quite a bad press during the course of this trial because of my reluctance to discuss matters, and my desire not to discuss matters. I think it is clear that there are people [37] in the mass media that are present here. I welcome that they be sworn. I have received—

THE COURT: You have answered the question, Mr. Kanarek. Let's go on to the next one.

Q BY MR. STEWART: Then, Mr. Kanarek, you did not actually transfer, give or release or relinquish possession of the actual transcript that was given to you by Mr. Kay, to anyone during the course of the trial?

A Well, at counsel table—

Q Other than the attorneys involved in the case or to your client.

A Right.

Q And did you ever permit Mr. Farr or anyone to read the transcript?

A No.

Q You did not show it to him?

A No.

Q Did you ever leave the transcript or cause to have left a copy of the transcript at a place where Mr. Farr could receive it or have access to it?

A I can't tell—this I don't know about.

Q But you did not prearrange—

A No.

Q —to deliver the transcript to some other location?

A Absolutely not. Of course at counsel table there are many documents.

Q Do you know Mr. Farr?

A Yes. [38]

Q Did Mr. Farr ever state to you whom he got the transcript from?

A No, but he has indicated in no uncertain terms that it wasn't me, without actually saying that, but he has indicated—in fact, just out in the hallway, just now.

Q What did he say?

A Well, he jokingly—he asked me, he said, in the presence of some of the deputies out there, he said, "Well, did you admit it?" Jokingly, in the presence of a couple of deputies out in the hallway.

Q From that you implied you did not do it?

A Well, yes.

Q At anytime during the course of the trial did you observe anyone including the attorneys and defendants in the case give to Mr. Farr or to anyone a copy of the transcript of Virginia Graham's testimony?

A No.

Q Did you observe anyone including the defendants and the attorneys in the case discuss or communicate any of the contents of the transcript?

A No, I can state that Mr. Fitzgerald has told me that Mr. Farr has told him that it wasn't any of the defense attorneys. Mr. Fitzgerald has told me that.

Q Mr. Farr did not tell you that?

A Way back, I mean I can't say, but back in October of 1970, it is my impression that that was the general gist of what Mr. Farr indicated.

Q Well, did he state to you in specific words that [39] it was not one of the defense attorneys in the case?

A This is my impression, at the time, that some of these matters occurred, that is my state of mind.

Q Can you recall the language that he used at that time?

A No, I can't recall his specific language, but that certainly was the impression.

THE COURT: Is this the language of Mr. Farr or of Mr. Fitzgerald?

THE WITNESS: Well, I would say both, your Honor. As I look back to October of 1970, thereabouts, my—this is my impression, but, as I say, I could be in error.

Q BY MR. STEWART: This is just your impression?

A Well, I don't have the exact words.

Q Did anyone state to you that he or she gave a copy of the transcript of Virginia Graham's testimony to Mr. Farr or anyone?

A No, Mr. Farr has indicated that some way or other the protection of Virginia Graham's parole or probation had something to do with this.

In other words, what Mr. Steinberg's part was in it I really don't know. I read the statement he made, but I—

Q Did Mr. Steinberg state that he knew who gave the transcript to Mr. Farr?

A Well, we were in chambers, and I think Mr. Steinberg made some statement, but as to whether he had precise knowledge or not I don't know. [40]

Q Outside of chambers he did not state to you that he knew who it was?

A I don't know whether I discussed it with him, but my impression is that part of this problem revolved around the protection, or someone wanting to protect Virginia Graham, and her parole status so she doesn't get in Dutch in connection with her parole or probation, or whatever.

Q Did anyone state to you that it was Virginia Graham that gave a copy of the transcript to Mr. Farr?

A No, no, although—I think Virginia Graham was on television.

Q I am talking about the transcript right in front of you.

A This precise transcript, no. I—

Q And no one has admitted to you that he was the party that gave the transcript to Mr. Farr.

A No.

Q Has anybody ever reported or stated to you that they saw someone give Mr. Farr or anyone a copy of Virginia Graham's transcript?

A No.

Q Do you know of your own knowledge who gave the transcript to Mr. Farr?

A I have an idea, yes, if I may answer. The District Attorney's office in the novel, Witness To Evil, has been given acknowledgment. Mr. Evelle Younger is acknowledged to be the person to whom Mr. Bishop is indebted for Witness To Evil [41]

Witness To Evil has in it many conversations that occurred at the bench—at the bench—that someone at that time could not know except by virtue—

THE COURT: You are not answering the question, Mr. Kanarek. You are making a speech.

THE WITNESS: Well, yes, your Honor. I would offer by reference the Witness To Evil book before this Court.

THE COURT: That is not the question.

Reframe the question, Mr. Stewart.

Q BY MR. STEWART: Do you have any knowledge of how Mr. Farr obtained possession of the transcript?

A No, I don't have any knowledge.

I would gather—I would gather it involves something, from what I understand, about Virginia Graham's parole.

In other words, somebody, I think Mr. Farr—

Q Excuse me, Mr. Kanarek, maybe I did not make myself clear:

What I am asking you for, do you know how physically he obtained possession of the transcript?

A No.

Q Or the procedure in which it was gotten to him?

A No.

Q Did Mr. Farr ever promise you or state to you in conversation that he would not divulge the source of any information that you could give him concerning the trial?

A No. It didn't get that far, because I have tried to obey the publicity order.

Q Just answer the question yes or no. Did he discuss [42] it with you?

A Well, newspaper men do that. I don't know about Mr. Farr specifically; say that again.

Q Did Mr. Farr ever promise, or state to you that he would not divulge the source of any information that you could give him concerning the trial or the defendants?

A I don't know whether Mr. Farr specifically—this happened this morning with a certain newsman who asked me—

Q I am only talking about Mr. Farr now.

A I cannot say because I mean there are just too many newspeople.

MR. STEWART: I have no further questions, your Honor.

THE COURT: Mr. Kanarek, what do you know about this parole status of Virginia Graham as it relates to this particular subject?

A Mr.—I gather in speaking to Mr. Farr that there was—I would gather—my state of mind is that Mr. Farr had a desire or has a desire, I don't know what tense, it may be even still has, to protect this lady's—he was afraid that somehow or other through these circumstances or otherwise that she would get in Dutch because of this information originally coming from her or being attributed to her.

That has some place in something in connection with this, your Honor.

THE COURT: Is that what he told you?

THE WITNESS: Well, he has discussed the fact that Virginia Graham had this status. [43]

THE COURT: He didn't tell you that she gave him the statement?

THE WITNESS: Oh, no. He may have talked—he may have told me that he talked to her. But if you are referring to this specific series of papers, that is a different story. I mean, I am sure that Mr. Farr has stated that he has spoken with her to me, I mean, that I recall him making that kind of a statement.

THE COURT: Well, do you know how Mr. Farr obtained the transcript of the Virginia Graham statement?

THE WITNESS: Well, he—no, I do not, no, your Honor. I do not know how he did it.

THE COURT: Anything further, Mr. Stewart?

MR. STEWART: No, your Honor.

THE COURT: You are excused, Mr. Kanarek.

THE WITNESS: Thank you, your Honor.

MR. STEWART: Mr. Fitzgerald.

THE CLERK: Would you raise your right hand, please. Would you repeat after me:

I do solemnly swear—

THE WITNESS: I do solemnly swear—

THE CLERK: —that the testimony I may give—

THE WITNESS: —that the testimony I may give—

THE CLERK: —in the cause now pending—

THE WITNESS: —in the cause now pending—

THE CLERK: —before this court—

THE WITNESS: —before this court—

THE CLERK— shall be the truth— [44]

THE WITNESS: —shall be the truth

THE CLERK: —the whole truth—

THE WITNESS: —the whole truth—

THE CLERK: —and nothing but the truth—

THE WITNESS: —and nothing but the truth—

THE CLERK: —so help me God.

THE WITNESS: —so help me God.

THE CLERK: Would you state your name, please and spell it.

THE WITNESS: Paul J. Fitzgerald.

PAUL J. FITZGERALD,

called as a witness, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. STEWART:

Q Mr. Fitzgerald, were you an attorney of record in the case of People versus Manson on or about October 8th, 1970?

A Yes.

Q Whom did you represent at that time?

A Patricia Dianne Krenwinkel.

Q At that time were you familiar with the Court's order re publicity made and entered in December of 1969?

A I was.

Q On the rail in front of you is a copy of the transcript of the complete testimony of Virginia Graham, taken October 5, 1970, which was exhibited in this hearing. [45]

Did you receive a copy of that transcript at anytime during the course of the trial?

A Yes.

Q Whom did you receive it from?

A My recollection is that I received it from Stephen Kay, a deputy district attorney.

Q And how many copies did you receive?

A I believe I received about four copies, one of which I gave to Irving Kanarek; one of which I gave to Daye Shinn; one of which I gave to Ronald Hughes, and one of which I retained for myself.

Q You were then given the copies to distribute to the defense attorneys?

A Yes, but they were distributed simultaneously. They were handed to me, and I distributed them. That is my recollection.

Q There was no extra copy then after you distributed them?

A No, there were no extra copies.

Q You still have your copy?

A I don't know. I don't know.

Q Do you recall seeing it at anytime after the conclusion of the trial?

A I could certainly check my records. I probably have it. I wouldn't like to state with any degree of certainty.

Q Do you recall using it during cross-examination?

A Oh, we had it, yes, oh yes.

Q Your own personal copy? [46]

A Yes.

Q Now, at any time did you copy or reproduce or cause to have copied or reproduced any portion of that transcript?

A No.

Q Do you know of anybody who did reproduce or copy your personal copy of the transcript?

A No.

Q Or any other copies distributed to the attorneys?

A None other than the district attorney's duplication process. What I in fact had received was a duplication, a duplicate, a photo-copy.

Q You do not know whether Mr. Kanarek or Mr. Shinn had their copies reproduced?

A I do not.

Q Did you ever summarize the contents of that transcript on a written document?

A No. I think I underlined portions of it, but I did not summarize it.

That was my custom, however, to summarize these types of documents, but I did not summarize this one because it really did not pertain to my client. It really pertained only to Susan Atkins.

Q You did not have it retyped, I assume.

A No, it wasn't retyped.

Q At anytime during the course of the trial did you discuss with Mr. Farr or any other newspaper reporter the contents, nature or substance of the transcript of Virginia Graham's testimony on the applicable date? [47]

A No.

Q Did you discuss with anyone the contents of that transcript?

A Certainly I did, yes.

Q Whom did you discuss it with?

A I discussed it with the other attorneys; discussed it with my client; discussed it with Susan Atkins; discussed it with Charles Manson; discussed it with Leslie Van Houten; discussed it with Maxwell Keith, Ronald Hughes, Daye Shinn; Irving Kanarek.

Q Other than the persons you just mentioned, did you discuss the contents and substance of that transcript with anyone?

A No—the Judge—excuse me.

Q And the Judge, yes.

Do you know if your client communicated to anyone the contents of the transcript of Virginia Graham's testimony?

A Well, I don't have any direct personal knowledge that she did or did not discuss it with anybody. My opinion would be that it was highly and extremely unlikely.

Q You have no facts upon which you could form an opinion then whether she did or did not reveal the contents of that transcript?

A Well, I base the opinion I just rendered on the fact that she was not particularly—Patricia Krenwinkel, by client, was not particularly interested in the contents of the document before me, and to my knowledge she did not [48] discuss it with anybody.

Certainly she did not discuss it with anybody in my presence. To my knowledge she did not at any time talk to any newsmen, so—

Q Did any agent, associate, or messenger of yours or anyone acting on your direction, suggestion or advice communicate all or a portion of the transcript of Virginia Graham's testimony?

A No.

Q And did you actually give or release or in any way relinquish possession of the actual transcript, either acting by yourself or in connection with other parties, the transcript of Virginia Graham's testimony to anyone?

A No, absolutely not.

Q Did you permit Mr. Farr or any other reporter to read the transcript?

A No.

Q Did you show it to him?

A No.

Q Do you know if any associates, friends or messengers of yourself showed the transcript to Mr. Farr?

A The document was never out of my possession, and I have no information whatsoever that any associate or agent or anybody connected with me showed this to Mr. Farr or showed the transcript to Mr. Farr.

Q And you did not leave the transcript or a copy

thereof at a place where Mr. Farr could pick it up or observe it. [49]

A No, I did not. I might correct the record somewhat.

I actually retained two copies of this document for a rather considerable period of time. I had in addition to my own copy, I had the copy of Ronald Hughes. Hughes was not interested in retaining his copy, and I had his copy as well.

But all the references and all the questions I answer would relate to both of those copies.

My recollection is that Hughes did take his copy sometime after—I think about three or four court days after this occurred.

But I am absolutely positive that Hughes' copy of this Virginia Graham statement was in my possession at the time the article appeared in the Herald-Examiner. My recollection is Hughes never even read this.

Q Did you keep both copies together?

A Yes.

Q Do you know as a fact that the second copy was not obtained by any other party?

A That is correct.

Q Did Mr. Farr ever inform you as to the party who gave him the transcript?

A No.

Q Did you tell Mr. Kanarek that Farr had told you it was not a defense attorney who gave him a copy of the transcript?

A Would you repeat the question?

THE COURT: Read the question, please. [50]

(Whereupon the reporter reads the pending question as follows:)

"Q Did you tell Mr. Kanarek that Farr had

told you it was not a defense attorney who gave him a copy of the transcript?"

THE WITNESS: Yes.

Q BY MR. STEWART Did Mr. Farr in fact tell you that?

A Yes.

Q When was that?

A On or about the time it occurred. I don't remember the date of the article in the Herald-Examiner, but my understanding is that—at the present time—that it occurred about a day after I had received a copy of this document.

I asked Farr where he got the information that appeared in the Herald-Examiner story. I did not ask Farr if he ever received a copy of this document because the material that appeared in the Herald-Examiner story that I considered to be grossly prejudicial was not contained in this statement.

I asked Farr where he got his information, and Farr was very evasive.

Farr did say—I must say that I thought that Daye Shinn gave it to Farr, and I asked Farr if in fact he received it from Daye Shinn.

In substance Farr replied that he did not receive the information from Shinn, nor did he receive it from any defense attorney. He was adamant that he did not receive it from Shinn.

Q Did he specifically state that he did not receive [51] it from any defense counsel?

A Yes, he specifically said he did not receive it from any defense attorneys.

I might say that Farr also made similar statements to Shinn as well as Kanarek, because after talking to Farr I apologized to Shinn because I had prematurely

accused Shinn of giving the information to Farr, and I apologized to Shinn, and said that I talked to Farr, and Farr had told me that Shinn did not give him the information, and that no defense attorney did.

You see, when I discussed it with Farr I knew that Hughes could not have given him the information. I felt it was unlikely anyway. I knew Hughes could not have given Farr this copy because I had Hughes' copy.

It appeared to me it would be extremely unlikely that Kanarek did it, and I did not do it. So I felt Shinn did, and I accused Shinn of it.

Also, Shinn had had some previous dealings with Farr with respect to a drawing of the jury that one of the defendants had made, and somehow got on the front page of the Herald-Examiner. So my suspicion had focussed on Shinn, and I accused Shinn of it.

Then I talked to Farr. After I talked to Farr I came back and apologized to Shinn, and I told Shinn that Farr said he did not receive it from Shinn, nor did he receive it from any defense attorney.

Then Shinn must have talked to Farr, and Kanarek must have talked to Farr, or at least Kanarek talked to Shinn, [52] because we mutually discussed the fact, all three of us mutually discussed the fact that Farr had told us that no defense attorney had given them the information.

Q You used the word "information." Was Farr at that time referring to the transcript of Virginia Graham's testimony taken on October 5th, or merely some information contained therein he may have obtained from other sources?

A Actually we were talking about two things:

We were talking about this document I have before me, and the material contained therein.

We were also talking about the source of information that was in the Herald-Examiner story that was not in this document.

For example, my recollection is there is no reference to Frank Sinatra, Steve McQueen, Elizabeth Taylor, et al., in this document.

But the materials that were so outrageous that appeared in the Herald-Examiner related to skinning Frank Sinatra alive while his records were being played; the fact they were going to kill Steve McQueen and Elizabeth Taylor, et cetera, et cetera.

I was interested in two things: whether or not he received a copy of this document; also the source of the additional information that appeared in the Herald-Examiner story.

Farr admitted to me he had an interview with Virginia Graham, but he did not say that Virginia Graham told him—all he would say is that he had an interview with [53] Virginia Graham, and he was concerned that her parole not be revoked, and he was concerned about discussing what she had told him with me or anybody else, because, as related to me by Farr, she had been ordered by the parole authorities in California not to discuss aspects of this case other than what she was allowed to do within the purview of the gag order.

Q Well, did he state that he got certain information that he used in his article from Virginia Graham?

A He did not specifically say, but he stated that he had interviewed Virginia Graham.

Q Was it your impression that part of this story was derived from a personal interview with Virginia Graham?

A Yes, it is very definitely my impression he received the information from Virginia Graham directly.

It is also my impression he had a copy of this statement as well.

Q Did he tell you he had a copy of the transcript?

A I want to be very careful not to misquote Farr. My recollection is that Farr said that he had a copy of this statement, but that he had not received it from any of the defense attorneys, and he had not received it from Daye Shinn.

THE COURT: Did he say he received it from a prosecutor?

A No. The only thing he said is, he made a very oblique sort of a statement.

He said something to the effect, "You lawyers ought to watch how you duplicate your materials."

And when he was using the term "you lawyers," it was [54] my state of mind he was referring to lawyers on both sides of the case.

But once he said that he didn't get it from a defense attorney, in my opinion that only left the prosecution, so it was my state of mind for the remainder of the conversation that we were really talking about one of the three or four prosecutors in the case.

Q Did he ever state to you that he obtained this willingly from one of the prosecution attorneys?

THE COURT: I don't understand that.

MR. STEWART: Let me rephrase that.

Q BY MR. STEWART: In other words, did he ever say to you that one of the prosecution attorneys knowingly furnished him a copy of the transcript of Virginia Graham's testimony?

A No, he didn't say that.

Q Did you get the impression from his statement that he received it perhaps accidentally?

A My impression was he got it accidentally on purpose, if you know what I mean; that the statement

was made available to him, but that it wasn't directly handed to him, something like that.

Now, that is solely my impression. Farr did not say that he received it directly from the prosecution.

Q You are talking about information he used in the article and the transcript itself. You were aware of that distinction when Mr. Farr was stating to you how he got a copy of the transcript?

A Yes. [55]

Q When he stated he did not receive the information from a defense attorney he was referring specifically to the transcript of the testimony, and not to other information that he may have obtained from an interview?

A Yes, he was referring to this document, he had not received from any of the defense attorneys.

But it was certainly my impression that he did not receive the other material that appeared in the Herald-Examiner from defense attorneys.

It was also my impression he did not receive that information from the prosecution either. It was my impression he received that additional information, the information referring to Elizabeth Taylor and Frank Sinatra, et al., from an interview he had with Virginia Graham, although he did not so directly state.

Q What statements of Mr. Farr at that time led you to the conclusion that he obtained a copy of this transcript indirectly from one of the prosecution attorneys?

A Because he said something—I tried to pin him down. He said that, first of all he said Shinn did not give it to him. And he was adamant about that. Shinn absolutely did not give it to him, he said.

Then he said no defense attorney gave it to him.

Then, when I tried to pursue who in fact had given it to him, and I at that time felt that obviously, by a process of elimination it was the prosecution had, I tried to pin him down as to what prosecutor—I can't remember if I asked him specifically was it Kay, was it Bugliosi, was it [56] Musich. But I did try to narrow it down as to what prosecutor, and he would not tell me.

He did make an oblique reference. He said something to the effect that "You lawyers ought to be careful when you duplicate these documents," something to that effect, which led me to believe—and he said it in such a way that it was my impression that he sort of got it through the District Attorney's office, with knowledge of the prosecutors, but that they didn't actually—it wasn't a hand to hand transaction at all.

That sort of was my impression. I got the impression that he was trying to convince me that he got it through the District Attorney's photocopy bureau or something like that, but with sort of knowledge of the prosecution.

Q Knowledge of which attorneys representing the prosecution?

A Well, my own—well, I want to be fair. My impression would be it was Mr. Kay, because Mr. Kay was the one that was responsible for the preparation of the documents, the man that was responsible for the duplication of the documents, and he was the one that was responsible for the distribution of the documents to us.

Bugliosi delegated the whole Virginia Graham thing to Steve Kay. The problem arose when Judge Older said that he wanted a tentative statement of testimony of Virginia Graham. The Judge had been heretofore been given a copy of what she was going to testify to

on the stand, but he wanted a more general statement as to what she was going to testify [57] to.

Bugliosi told Kay to interview Virginia Graham, prepare such statement, which he did, and to give it to us. Our inquiries with respect to Virginia Graham were all directly with Kay. We dealt very little with Bugliosi about the whole Virginia Graham thing because he directed us always to Kay.

And Don Musich didn't have anything to do with it either. It was Kay that handled it, and I just assumed—

Q Did he mention Mr. Kay's name at all during this discussion?

A No, he didn't.

Q So it is only your assumption based on the fact that Kay took the original testimony?

A Yes, and it is a gross assumption. I don't have any information or factual material to base that opinion on.

Q Did he make the statement that he obtained this knowledge with the acquiescence of the attorneys of record in the case, as distinguished from someone else in the District Attorney's office?

A As I say, I just sort of got the impression, the way he said it, the look on his face, things like that, that the prosecution knew about it, but that he sort of did not obtain it directly.

I cannot really point to anything very specifically, and say "Ahah!"

Q Did he state when he got the transcript?

A No, but—and this is extremely important—we got into a big discussion about where he got the information [58] I was so infuriated about, the information about Frank Sinatra, Elizabeth Taylor, et al.

And he said—Farr told me that some of that information had been mentioned in earlier statements of Virginia Graham to the police, that took place at the State Prison at Corona.

What Farr was referring to was documents in all of our possession, relating to—that we had obtained by way of pretrial discovery, relating to initial statements made by Virginia Graham.

He said there was some reference in there about Frank Sinatra and these other movie stars; and I said there wasn't. And he said—he said, "Well, I have read those documents." He said, "And they are."

And I said "I read them, too, and they are not."

He told me, too, that he had read initial statements of Virginia Graham to the police. He told me there is nothing new in this statement, that he didn't know before he had the statement.

Q Did he state what time, what date he received that transcript that you have in front of you?

A No, he didn't.

Q Did he state to you how, the mechanical means in which it was transferred to him?

A No, he didn't.

Q Did he show you a copy of that transcript?

A No.

Q Did you observe anyone, including the attorneys [59] or defendants give to Mr. Farr a copy of the transcript?

A No.

Q Or to anyone outside of the other attorneys?

A No.

Q Did anyone admit to you or state to you that he or she gave the transcript of Virginia Graham's testimony to Mr. Farr?

A No, no. On the contrary; everybody denied it.

Q Did Mr. Farr promise you or state to you that he would not divulge the source of any information you had given him during the course of the trial?

A It is difficult for me to answer that question in the form in which it is stated.

I had not met Bill Farr before this case started. I met Bill Farr through this trial, in his capacity as a reporter for the Herald-Examiner, and actually, although at times throughout the trial I became just absolutely infuriated and furious with some of the things he wrote, I actually liked Farr, and came to admire him for certain stands he took relative to certain issues that came up during the course of the trial.

And Farr and I had discussed a lot of things. But my recollection is that Farr did not promise not to divulge anything I told him. But I had literally hundreds of conversations with Farr.

Q Specifically, confined specifically to the period on or about October 8th?

A No. [60]

Q Did you discuss with Mr. Steinberg the transcript of Virginia Graham's testimony?

A No, I did not.

Q He did not inform you, then, who gave the transcript to Mr. Farr?

A No, he didn't.

Q Did Mr. Farr state to you in any of your conversations that he obtained the transcript from more than one of the attorneys of record in the case?

A No, Mr. Farr did not say that. He didn't use the singular, either.

Q Did you ask him who gave it to him?

A I asked Farrr who gave it to him, and he refused to tell me.

Q At this time do you know who gave the transcript of Virginia Graham's testimony to Mr. Farr?

A I do not.

Q Did Mr. Farr, Mr. Fitzgerald, indicate that he had a copy of the complete transcript of Virginia Graham's testimony or merely excerpts?

A He did not indicate that he had a complete transcript, but I certainly assumed that he did.

Q Did he indicate he did not have a complete transcript?

A No.

MR. STEWART: I have no further questions.

THE COURT: You are excused, Mr. Fitzgerald. We will take up the balance of the calendar matters at this time.

(Recess) [61]

Superior Court of the State of California, for the County of Los Angeles.

Department No. 104.

Honorable Charles H. Older, Judge.

The People of the State of California, Plaintiff, vs. Charles Manson, et al., Defendants. No. A 253,156.

State of California, County of Los Angeles—ss.

I, J. HOLLOMBE, Official Reporter of the Superior Court of the State of California, for the County of Los Angeles, do hereby certify that the foregoing 61 pages comprise a full, true and correct transcript of the proceedings had and the testimony taken in the matter of the above-entitled cause.

Dated this 2nd day of July, 1971.

/s/ J. Hollombe

Official Reporter [62]

In the Matter of the Contempt of William T. Farr.

Superior Court of the State of California for the County of Los Angeles.

Department No. 104.

Hon. Charles H. Older, Judge.

The People of the State of California, Plaintiff, vs. Charles Manson, et al., Defendants. No. A 253,156.

July 19, 1971

Appearances:

For the People: William F. Stewart, Esq., Deputy County Counsel.

For William T. Farr: Grant Cooper, Esq., Edward L. Compton, Esq.

Amicius Curiae: Stephen Reinhardt, Esq., Earl Klein, Esq.

J. Hollombe, Official Reporter.

LOS ANGELES, CALIFORNIA, MONDAY, JULY 19, 1971, 2:20 P.M.

MR. COOPER: May I address the Court?

THE COURT: Yes, Mr. Cooper.

MR. COOPER: If your Honor please, without solicitation on our part, but nevertheless it is welcomed, an organization known as Sigma Delta Chi Journalism Society, Los Angeles Chapter, and the Western Division, have filed with this Honorable Court an application for leave to file a brief-amicus.

I would move, your Honor, that they be permitted to file the brief that is appended to their application. I might suggest that they have a vital interest in the principles involved in this situation.

THE COURT: Yes, I have read the application, and leave will be granted.

MR. COOPER: Thank you, your Honor. I think one other housekeeping matter: Mr. Hollombe has called to my attention on page 37 of the proceedings of June 3rd, 1971, at line 21, a typographical error. The words "The Court" should be changed to "Mr. Cooper." I move that correction, your Honor.

THE COURT: Yes, the transcript will be corrected to show on line 21 of page 37. It reads:

> "MR. COOPER: He can be eliminated, your Honor."

MR. COOPER: That is correct, your Honor. I have nothing further.

THE COURT: Very well, you may proceed, Mr. Stewart.

MR. STEWART: Mr. Farr

THE CLERK: I believe you have already been sworn, Mr. [3] Farr.

THE WITNESS: That is correct.

THE CLERK: Take the stand, please. State your name for the record.

THE WITNESS: William T. Farr, Jr.

MR. COOPER: If your Honor please, it may be that some of the questions that are propounded to the witness, that the witness may want to consult with me, with the Court's permission, if he indicates as to whether or not he should stand on Section 1070—

THE COURT: Yes. I intend, just so that there won't be any misunderstanding, if he refuses to answer the question, I will order him to answer it, assuming it is not otherwise objectionable, under penalty of being found in contempt of Court for failing to do so; and he may then refuse a second time before any finding is made.

And, Mr. Farr, if you wish to confer with Mr. Cooper at any time before refusing or answering, why, just so indicate to the Court.

CROSS-EXAMINATION

BY MR. STEWART:

Q Mr. Farr, at the hearing on June 3rd, 1971, I believe you testified that you were no longer a reporter employed by a newspaper.

A That is correct.

Q Now, is that correct today as well?

A That is still correct, yes.

Q At the hearing on June 3rd, I believe, through [4] your attorney you introduced into evidence a copy of the complete statement of Virginia Graham, taken on October 5th, 1970.

Was this transcript the actual transcript that you received from your source of information?

A No, it's a copy of one of the copies.

Q You Xerox'd this?

A This was reproduced. I am not sure whether that is the proper term for it. I am not sure whether that is the proper terminology for the method of reproduction.

Q Did you reproduce it or was it reproduced by somebody else?

A I reproduced that given copy.

Q Well, the copy that you did obtain, was that a copy of the complete testimony of Virginia Graham on October 5th—

THE COURT: Excuse me, Mr. Stewart, will you turn on that microphone; it is a little hard to hear due to the air-conditioning.

Q BY MR. STEWART: Did you hear the question?

A Yes, I did, to the best of my knowledge, I have no way of knowing per se whether that is a complete version, since I wasn't present when the statement was taken. I believe that it is.

Q But the statement that you received was typewritten out?

A Yes—

MR. COOPER: You mean typewritten as distinguished from Xerox or other copy? [5]

Q BY MR. STEWART: No, as distinguished from written out in longhand.

A That is correct.

Q And do you know whether the copy that you received was an original typewritten copy or was it a Xerox, or reproduced copy?

A I do not know, and we are now talking of statement, singular; I think that would be an error.

Q You received more than one copy?

A That is correct.

Q How many copies did you receive?

MR. COOPER: You may answer that.

THE WITNESS: Three.

Q BY MR. STEWART: Did you receive all three copies from the same source?

A No.

Q Did you receive three copies from three separate sources?

MR. COOPER: Do you wish to stand on Section 1070 on that?

THE WITNESS: I respectfully decline to answer it on the provisions of 1070 of the Evidence Code, and on the added ground it impinges on the guarantee of the First Amendment.

THE COURT: I order you to answer the question, Mr. Farr, under penalty of being found in contempt of Court for failing to do so.

MR. COOPER: I will stipulate that the same question may [6] be deemed to have been propounded to the witness, if that is satisfactory to the Court.

THE COURT: I think we'd better have an express refusal, Mr. Cooper, if there is going to be one.

MR. COOPER: There is going to be one—whichever way your Honor wants to do it, it's all right.

THE WITNESS: Your Honor, I still respectfully decline to answer on the same grounds, or shall I repeat the grounds?

THE COURT: You can state you refuse to answer on the same grounds.

THE WITNESS: I do respectfully decline to answer on the same grounds.

Q BY MR. STEWART: However, based on your previous answer, you did receive it from more than one source; is that correct?

THE COURT: Just a minute, Mr. Stewart, I am going to make a finding based on the refusal.

Mr. Farr, I find you in direct contempt of Court for your failure to answer that question.

MR. STEWART: Could the reporter read back my previous question?

THE COURT: Yes.

(Whereupon the reporter reads the record)

THE WITNESS: I wish to speak to Mr. Cooper again.

THE COURT: While you are conferring, Mr. Cooper, if Mr. Stewart doesn't ask the question, I will ask him as to whether or not these three copies were identical copies or whether they were different documents, different context. [7]

MR. COOPER: May I stand here, if your Honor please, in the interest of time?

THE COURT: Yes.

THE WITNESS: The answer to the question is yes.

Q BY MR. STEWART: Did you receive them all at the same time?

A The answer is no.

Q Did you receive them all the same day?

A To the best of my recollection, yes.

Q Did the transfer take place in this building, The Hall of Justice?

A I respectfully decline to answer pursuant to the provisions of Section 1070 of the Evidence Code and on the further ground it is an impingement on the First Amendment.

THE COURT: I order you to answer the question, Mr. Farr, under penalty of being found in contempt of Court for failing to do so.

MR. COOPER: If your Honor please, I will stipulate that the same question has in fact been propounded to the witness again, and again in the light of the Court's admonition he will still respectfully decline to answer on the same grounds.

THE WITNESS: That is correct.

THE COURT: I find you in direct contempt of Court, Mr. Farr, for failing to answer that question, for refusing to answer that question.

Q BY MR. STEWART: Mr. Farr, were these handed to you personally by one or more of the attorneys of record in the case of People versus Manson? [8]

A I respectfully decline to answer on the same ground.

THE COURT: I order you to answer the question, Mr. Farr, under penalty of being found in contempt of Court for failing to do so.

A I respectfully decline on the same ground.

MR. COOPER: I will stipulate that the same question may be deemed to have been propounded to him, and he giving the same answer.

THE COURT: I find you in direct contempt of Court for failing and refusing to answer that same question.

Q BY MR. STEWART: Mr. Farr, in your declaration that you filed on May 28th, 1971, you stated that you gave your explicit promise to said sources that "I would never divulge the source of my information, and, implicitly, the promise of my said newspaper."

Is that statement correct?

A Yes, it is.

Q Did you give this exclusive promise face to face with the source of the information?

A The answer would not be the same to all parties involved.

Q Well, to any of the parties involved was your promise made face to face with that person?

A Yes, it was.

Q As to how many of those parties was your promise made face to face?

A Two of the three.

Q And was the third one made by telephone or some [9] means of communication?

A This was made by telephone.

Q And were these promises made prior to the receipt of the transcript of Virginia Graham?

A Either prior to or—

MR. COOPER: —contemporaneously?

THE WITNESS: —contemporaneously. I don't specifically recall, but certainly within a very short period of time.

Q BY MR. STEWART: But as to all three of the sources of your transcript, you did make an explicit promise not to reveal the source?

A Yes, sir, that is correct.

Q Now, in your testimony on June 30th, Mr. Farr, you stated as follows; I will quote just to remind you of your testimony.

MR COOPER: Pardon me while I get my copy. Page, Counsel?

MR. STEWART: Page 32.

MR. COOPER: The witness has a transcript in front of him.

Q BY MR. STEWART: Now, I am referring specifically to line 22, Mr. Farr, I asked you the following question:

"Q Mr. Farr, by way of clarification of the previous question, you stated in your declaration that you obtained from confidential sources the transcript of Miss Virginia Graham's testimony

"Did you receive the information from one or more of the attorneys of record in this case?" [10]

Your answer was, "Yes, I did."

Now, did you make an explicit promise not to reveal the source of your information to one or more of the attorneys in this case, People versus Manson?

A Yes, I did.

THE COURT: Mr. Stewart, that question starts on line 21 rather than 22, I believe.

MR. COOPER: I think that is correct.

MR. STEWART: Yes, I'm sorry, your Honor.

Q Was your promise to one or more of the attorneys of record in this case made face to face?

A Yes, it was.

Q Was it made to more than one of the attorneys of record in the case?

A Yes, it was.

THE COURT: I didn't clearly hear that question. Would you read the question and the answer please.

(Reporter reads the record)

Q BY MR. STEWART: As to both attorneys of record—strike that.

THE WITNESS: The question is based on a false premise.

MR. STEWART: I struck the question.

Q As to those attorneys of record in the case from whom you received the transcript, did you in each instance make a face to face promise to them that you would not reveal the source of the information?

A No.

MR. COOPER: You can go ahead and amplify it. [11]

A One promise would have been made to an attorney of record via telephone.

Q As to the other attorney of record, or attorneys of record, the promises were made then face to face?

A Yes, they were.

Q And prior to the receipt of the transcript from that person, is that correct?

MR. COOPER: That has already been asked and answered, if your Honor please. He said it was either prior to or contemporaneously. He doesn't know just exactly, but at or about the same time.

THE COURT: I think the record is clear on that.

Q BY MR. STEWART: And by attorney of record Mr. Farr, was it one or more of the attorneys that were present in this Court on June 30th for testimony in this matter?

A I respectfully decline to answer on the same grounds as previously stated.

MR. COOPER: If your Honor please, I would like to state something for the record at this time:

I have read the testimony of the proceedings when counsel were present during my absence. I have also read the representations that I as counsel for this witness made to the Court when we were last here. Those representations that I made to the Court at that time still stand.

THE COURT: Well, I also have—of course I was present during all of the proceedings, but I have also reread several times both the representations and—well all of the proceedings, and I understand them to be Mr. Cooper, that you were [12] representing that among six named attorneys, Mr. Bugliosi, Mr. Kay, Mr. Musich for the prosecution; and Mr. Kanarek, Mr. Shinn and Mr. Fitzgerald for the defense; that among those six was the person or were the persons from whom Mr. Farr obtained the statement of Virginia Graham which is the subject of this investigation.

MR. COOPER: That representation still stands, if your Honor please. I am rather surprised at the testimony adduced here.

THE COURT: Needless to say I was too, because there was no way of reconciling what you had said with the testimony which in fact was given.

I also understand that there are no other persons outside that group of named, or six named attorneys that I just mentioned from whom Mr. Farr received a copy of the statement.

MR. COOPER: If your Honor please, I think I can clarify the situation.

Of the names that your Honor has mentioned, there were two transcripts received from that source.

THE COURT: What you are saying then is that the third Virginia Graham statement was received from someone who is not in that same named group.

MR. COOPER: That is correct, your Honor.

THE COURT: All right; go ahead, Mr. Stewart.

Q BY MR. STEWART: By way of clarification, then, Mr. Farr, at least two of the sources of Virginia Graham's transcript were attorneys of record in the case of People [13] versus Manson?

A That would be correct.

Q By attorney of record, are you referring to an attorney who is actually on the record as having made a personal appearance in this Court in the case of People versus Manson?

A Yes, I am.

THE COURT: Specifically, are you referring to those six attorneys I named just a few moments ago?

A I am specifically referring to that group.

THE COURT: That is the way I understand the context of this testimony.

MR. COOPER: I didn't think you wanted to answer the question, but that is all right. That is the reason I was making a representation.

THE COURT: If you want to confer with Mr. Cooper, feel free to do so.

THE WITNESS: I don't want to obfuscate that point. I think we made a representation before in order to clarify it so we wouldn't be, as you put it, on a hunting expedition—fishing expedition.

THE COURT: Let's carry that just one point further:

I would construe your testimony so far to mean then that the third statement was received from someone who was not an attorney of record in the case.

MR. COOPER: You can stand on 1070 on that.

THE WITNESS: I respectfully decline to answer that question.

THE COURT: Then I think we are bound up in some [14] semantical difficulties, Mr. Cooper.

MR. COOPER: Well, if your Honor please—

THE COURT: For example, the District Attorney, I suppose is the attorney of record.

MR. COOPER: If your Honor please, to answer that question might narrow down the third one and almost name him, and I don't feel he can do that. That is the reason for it. I think he has gone further than he intended to go in answering the questions.

His statements, at least from what he has told me, and I believe him, I believe they verily are true, and he is not trying to play fast and loose with this Court.

It so happens that it makes a great deal of sense to me, and it may be difficult for the Court to understand.

THE COURT: Well, I can see a simple answer to the question. But unfortunately I don't have the answers, so I don't know whether it is correct or not.

Well, reframe that question again, would you, Mr. Stewart, so Mr. Farr has an opportunity to consider it once more.

Q By MR. STEWART: I can't remember the exact question I asked, your Honor.

MR. COOPER: The question was with respect to was the person from whom he obtained the third copy also an attorney of record. I think that was the question.

MR. STEWART: I will ask the question.

MR. COOPER: I haven't worded it exactly the way you have, but that was the substance. [15]

THE COURT: If necessary we can go back and have the question read. Perhaps that is the best thing to do. Let me ask a question:

Was the third person from whom you received the statement also an attorney of record in the case?

THE WITNESS: I respectfully decline to answer on the previously stated grounds.

THE COURT: I can't see any basis whatever for refusing to answer that question. You already stated that two of them are attorneys of record.

I order you to answer the question, Mr. Farr, under penalty of being found in contempt of Court for failing to do so.

MR. COOPER: I will stipulate that the same question has been propounded to the witness, and that he has declined to answer on the same grounds, your Honor.

THE COURT: I find you in direct contempt of Court for failing and refusing to answer that question.

Q BY MR. STEWART: Mr. Farr, to your own knowledge, do you know whether any of the three persons that were the source of your transcript knew that the other person also gave you a copy of the transcript?

A It is my belief they did not.

Q And all three copies of the transcript from the three different individuals you testified to were received prior to the time you wrote your article in the Herald-Examiner on October 9th?

A That is correct. [16]

Q Which was also prior to the time that Virginia Graham testified in open court. Is that correct?

A That would be correct also.

Q Now, as to the third party, do you know of your own knowledge whether he was subject to the Court's order re publicity entered in December of 1969?

MR. COOPER: I would object to that on the ground it calls—it might be within his personal knowledge, I don't know.

THE WITNESS: I am going to decline—I respectfully decline to answer on the previously stated grounds.

MR. COOPER: Let me talk to the witness first on that.

(Off the record discussion between Mr. Cooper and Mr. Farr, after which the following proceedings were had in open court.)

THE WITNESS: Can I retract my previous answer, your Honor? I have no personal knowledge of the person's state of mind.

THE COURT: I don't understand that.

MR. COOPER: Well, if your Honor please, my point is this: The point is this, I think the situation is this:

My judgment would be that this individual probably did, but he doesn't know of his own personal knowledge.

MR. STEWART: I don't believe I asked him if the source of the information knew he was subject to the order. I wanted to know if Mr. Farr knew the person was one of the parties covered by the order.

MR. COOPER: I would stipulate, if your Honor please, that he was covered by the order. [17]

THE WITNESS: I misunderstood the question. Yes, I did know that.

Q BY MR. STEWART: You knew that the third source of information was covered by the Court's order re publicity?

A I presume so. Yes, I did have knowledge.

Q Did any of the three sources of the transcript discuss with you the fact that they felt that they were subject to the Court's order re publicity, and by giving you the transcript it was a violation thereof?

MR. COOPER: I would advise the witness to stand on Section 1070.

THE WITNESS: I will again respectfully decline to answer on the previously stated grounds.

THE COURT: I would like to have the question read, please.

(Whereupon the reporter reads the pending question.)

THE COURT: What is the ground of the refusal?

THE WITNESS: The same grounds as previously stated.

THE COURT: I am wondering whether the question was really relevant to the proceeding. We are not really concerned whether or not the person who gave the statement to you knew it or didn't know it. If he was subject to the order he knew it, and your answer is not going to change anything.

I think I will sustain the objection on the ground that the question is irrelevant.

Q BY MR. STEWART: Was the actual transcript given you by the three sources transferred to you personally, Mr. Farr?

A Yes, it was.

Q Was it a face to face encounter with each of the [18] three sources?

A In one instance it was not.

Q So in two instances it was a face to face encounter with the individual in question?

A That is correct.

Q In the third case was it transferred by messenger or left—

First, was it transferred by messenger?

A No, it was not.

Q Was it left at a place where you could pick it up?

A Yes, it was.

Q Where was it left?

A I respectfully decline to answer on the grounds previously stated.

THE COURT: I order you to answer the question, Mr. Farr, under penalty of being found in contempt of court for failing to do so.

MR. COOPER: If your Honor please, I will stipulate that the question has been propounded to the witness, and he has again declined to answer on the same grounds.

THE COURT: Do you refuse to answer the question on the same grounds?

THE WITNESS: Yes, your Honor.

THE COURT: All right. I find you in direct contempt of Court for failing and refusing to answer that question.

Q BY MR. STEWART: Mr. Farr, in that third case where the transcript was not actually transmitted to you personally by your source, did the source inform you as to where you might [19] find that copy of the transcript?

A Yes, he did.

Q In any of the three cases, three instances where you received a copy of the transcript, did you initially contact the source and request a copy of the transcript, or did the source first contact you?

MR. COOPER: Pardon me, if your Honor please, I think I want to state this on the record with your permission.

I have instructed the witness that he could decline to answer this question on the ground that his testimony might tend to incriminate him, but he decided to waive that. I shouldn't say waive it, but he is not going to urge that ground.

THE WITNESS: In all three instances I made the initial approach.

Q BY MR. STEWART How did you find out about the transcript in the first place, Mr. Farr?

A I don't honestly recall how I initially came to know the statement was taken. I'm not certain. I think I recall, but I prefer not to say—not to guess.

Q Was this transcript given to you by any of the sources in return for some sort of compensation?

A No.

Q Did any of the sources at the time of your initial contact with them inform you that they would not give you a copy of the transcript?

MR. COOPER: May we have that question read? I was wool gathering. [20]

THE COURT: Yes. Read the question.

(Whereupon the reporter read the pending question as follows:)

"Q Did any of the sources at the time of your initial contact with them inform you that they would not give you a copy of the transcript?"

THE WITNESS: The answer would be no, although there was resistance in all three instances.

Q BY MR. STEWART: How long after the initial contact in each instance, if you want to take them separately, did you receive the actual transcript?

A How do I delineate in each instance is the problem.

Q Well, take your first contact; how long after you first suggested it did he give you a copy of the transcript?

MR. COOPER: I take it, approximately.

MR. STEWART: Pardon?

MR. COOPER: Approximately.

Q BY MR. STEWART: Approximately, yes. Approximately how long after your initial contact with him did it take to receive a copy of the transcript?

A Shortly before the outset of the day's court-proceedings, shortly after the proceedings ended. That would be approximately six hours. I would say approximately eight hours, I guess.

MR. COOPER: It was approximately six to eight hours; eight hours if you included the lunch hours.

Q BY MR. STEWART: So your initial contact in the first instance then was in the morning, and you got the transcript [21] at the close of the court business on that day?

A By early evening at the latest, yes.

Q Was that true of all three instances?

A It would be true of two instances.

Q With those two was it on the same day?

A Yes.

Q The third instance, did that involve the day following?

A Yes, sir, it did.

Q And in all three instances was it an exact copy of the transcript that you received?

MR. COOPER: I think the witness answered that question earlier.

MR. STEWART: I can't remember. That is why I asked.

MR. COOPER: His answer was that he assumed that it was, but not having been present when it was taken, he doesn't know.

MR. STEWART: I am asking him to compare the three different copies he received from the three different sources. Were those the same?

THE WITNESS: They were essentially the same. I did not compare them page by page.

Q BY MR. STEWART: I see, but from appearances, they looked like they were the same, is that correct?

A Yes.

Q In all three cases they were typewritten as distinguished from written out in longhand?

A That is correct. [22]

Q And were they all—none of them was an original typewritten copy, is that correct?

A That is my recollection.

Q What was the date on which you received the two copies the same day?

A October 7th.

MR. COOPER: That would be 1970.

THE WITNESS: 1970 is correct.

Q BY MR. STEWART: A third copy then was obtained by you on October 8th?

A That is correct.

Q Were the first two copies the copies you received on October 7th, 1970, from those two parties who were attorneys of record in the case?

A Can you repeat the question?

THE COURT: Read the question.

MR. COOPER: I think, if your Honor please, the question has heretofore been asked and answered.

MR. STEWART: Not in reference to these two copies he received on the same day.

You may answer the question.

THE WITNESS: I'm sorry, could you read the question one more time?

(Whereupon the reporter reads the pending question.)

THE COURT: What he asked you was whether or not the two copies you received on October 7th were received from the attorneys of record in the case.

Is that right, Mr. Stewart? [23]

MR. STEWART: That is correct.

THE WITNESS: Yes, sir, they were.

Q BY MR. STEWART: And those were the two copies you received directly from the sources involved on a face to face confrontation?

A That is correct.

Q Did you give those copies back to any of the sources at any time?

A You are talking about these two copies?

Q Let's take those two copies first.

My question is now directed to the two copies that you received on October 7th.

A They were copied and returned to the original source.

Q So you did not keep it, the original copy that was transmitted to you by the sources?

A That is correct.

Q As to the third copy that was received on October 8th, did you also copy that and return the original to the source?

A That is correct.

Q What was the date in which you returned the copies received on October 7th?

A My best recollection is that all would have been returned on October 8th. One might have been on a different day. I just don't recall specifically, but my best recollection is that all three were returned on October 8th.

Q When you received the copies from the source or [24] sources, rather from all three sources, was it with the understanding between you and the source that you would make a copy of that transcript and return the original to the party?

A Yes, it was.

Q Did all three sources insist on that as a condition for giving you the transcript?

A I don't believe so. I think I simply suggested that that would be the best method.

Q Mr. Farr, were you present on June 30th, 1971, in this Court when the six attorneys of record took the stand and testified in this matter?

A Only part of the time.

Q What witnesses were you present for their complete testimony?

A I heard Mr. Kanarek, a portion of Mr. Kanarek's testimony, and I heard almost the entirety of Paul Fitzgerald's testimony.

MR. COOPER: May I ask a question?

THE COURT: Yes.

MR. COOPER: Have you read the transcript of the proceedings of June 3rd, 1971?

A Yes, avidly.

Q BY MR. STEWART You are talking about June 3rd?

A Yes.

Q How about the proceedings of June 30th?

MR. COOPER: Pardon me. I meant June 30th; that is what I meant. [25]

THE WITNESS: My answer pertains to June 30th.

Q BY MR. STEWART: So you were then familiar with the testimony of each of the six witnesses who testified on that date as shown by the record?

A Yes, I am.

MR. STEWART: Do you have a copy of that transcript, counsel?

MR. COOPER: Yes, I do.

THE COURT: Before we get into that, Mr. Stewart, I would like to ask Mr. Farr one or two questions in connection with his previous answers.

Referring now to the two attorneys of record from whom you received two copies of the Graham statement, Mr. Farr, to your knowledge did each of these attorneys of record know that the other had given you a copy of the Graham statement?

THE WITNESS: It is my understanding that they did not know.

THE COURT: Did you give any consideration to any of these three persons from whom you received the three statements, the Graham Statements, and by consideration I mean did you either give them anything of any tangible value or did you make any promise to them or did you give them anything of any benefit at all?

A There was no offer of consideration, in a legal sense, or any offer, period. It did not enter into the conversations at all, your Honor.

THE COURT: Go ahead, Mr. Stewart.

Q BY MR. STEWART: Mr. Farr, let me show you a copy of [26] the transcript of June 30th that you can use to refresh your memory.

Would you please turn to page 51 of that transcript.

MR. COOPER: I take it the Court has no objection to my standing here.

THE COURT: No, none at all.

What was the page, Mr. Stewart?

MR. STEWART: Page 51.

MR. COOPER: That is the testimony of whom?

MR. STEWART: Paul Fitzgerald.

MR. COOPER: All right.

Q BY MR. STEWART: Now, I asked Mr. Fitzgerald on that date, Mr. Farr, the following question:

"Q Did you tell Mr. Kanarek that Farr had told you it was not a defense attorney who gave him a copy of the transcript?"

"THE WITNESS: Yes.

"Q. BY MR. STEWART: Did Mr. Farr in fact tell you that?

"A Yes."

Is that a correct statement by Mr. Fitzgerald?

MR. COOPER: I will state for the purpose of the record, I think it is a proper question. The only objection that I am advising you to stand on is as to the source of your information, or where the question is so obvious that it could point to the source.

That is the only time I am advising you to stand on Section 1070. I don't think this question does that. [27]

THE WITNESS: My recollection is that I never made that statement to Mr. Fitzgerald.

MR. COOPER: And by that statement you mean—

"Q BY MR. STEWART: Did you tell Mr. Kanarek that you had told him it was not a defense attorney who gave him a copy of the transcript?"

A That is correct.

THE COURT: Well, I don't think that is the statement, Mr. Cooper. The statement is whether or not you told Mr. Fitzgerald that it was not a defense attorney who gave you a copy of the transcript.

THE DEFENDANT: The answer would remain the same. I have no recollection of making that statement to Mr. Fitzgerald or Mr. Kanarek.

Q BY MR. STEWART Would you turn to page 56 of that transcript, again relating to the testimony of Mr. Fitzgerald.

MR. COOPER: What line, counsel?

MR. STEWART: Line 16. My question was:

"Q What statements of Mr. Farr at that time led you to the conclusion that he obtained a copy of this transcript indirectly from one of the prosecution attorneys?"

Fitzgerald answered:

"A Because he said something—I tried to pin him down. He said that, first of all he said Shinn did not give it to him. And he was adamant about that. Shinn absolutely did not give it to him, he said."

Q Is that true, Mr. Farr? Is that a true statement by Mr. Fitzgerald? [28]

A As with a great many statements by Mr. Fitzgerald during his testimony, I think he has a faulty recollection. I think that statement pertains to this bit of testimony here, a very faulty recollection of what was stated.

Q Then is it your answer that it is not true; you did not tell him that Shinn did not give it to you?

A That is correct.

Q The next line, line 23; Fitzgerald then stated: "Then he said no defense attorney gave it to him." Is that true?

A That also is untrue.

THE COURT: Just so we are absolutely clear, what you are saying, Mr. Farr, is that you did not tell Mr. Fitzgerald that no defense attorney gave the statement to you, or statements.

THE WITNESS: Yes, your Honor. I did not state to him that no defense attorney gave it to me.

Q BY MR. STEWART: Did you make any such statement to any other attorney in the case?

A No, sir.

Q Did you ever exclude specifically any of the attorneys in the case?

A No, I did not.

Q Did you ever intimate or intend to convey the impression that no defense attorney gave you the transcript?

A No, I did not.

Q Did you ever intimate to any one or intend to convey [29] the impression to anyone that it was one of the prosecution attorneys that was the source of the transcript or transcripts?

A No, I did not.

Q Were you present in the Court at the time Mr. Fitzgerald stated that, in response to my question, that he did not give you or anyone a copy of the transcript of Virginia Graham's testimony?

A Yes, I believe I was.

Q Did you hear his answer that he did not?

A Yes, I did.

Q You did hear him deny that he gave you a copy of the transcript?

A Yes, I did.

Q Was his denial the truth?

THE COURT: That question is a little reversed. Let's put the question directly, Mr. Stewart.

Q BY MR. STEWART: Well, then, did Mr. Fitzgerald give you a copy of the transcript of Virginia Graham's testimony?

A I respectfully decline to answer on the same ground as previously stated.

THE COURT: I order you answer the question, Mr. Farr, under penalty of being found in contempt of court for failing to do so.

THE WITNESS: And I must again respectfully decline to answer on the previous grounds.

MR. COOPER: If your Honor please, I will offer to stipulate that the same question was propounded to him, and [30] he gave the same answer.

THE COURT: Very well. I find you in direct contempt of Court for refusing and failing to answer that question.

Q BY MR. STEWART: Were you present at the time I asked Mr. Fitzgerald whether or not he had ever received a promise from you not to reveal the source of any information you could give him—that he could give you?

A I don't recall it, counsel. At one point I did leave the court room to make a telephone call.

Q Well, did you read it when you read the transcript over?

A Yes, I did.

Q Is that a correct statement?

THE COURT: We'd better find the precise place in the transcript, and read it to the witness.

MR. STEWART: This is on page 60, your Honor, line 9:

> "Q Did Mr. Farr promise you or state to you that he would not divulge the source of any in-

formation you had given him during the course of the trial?

"A It is difficult for me to answer that question in the form in which it is stated. I had not met Mr. Farr before this case started. I met Bill Farr through this trial, in his capacity as a reporter for the Herald-Examiner, and actually, although at times throughout the trial I became just absolutely infuriated and furious with some of the things he wrote, [31] I actually liked Farr, and came to admire him for certain stands he took relative to certain issues that came up during the course of the trial. And Farr and I had discussed a lot of things. But my recollection is that Farr did not promise not to divulge anything I told him. But I had literally hundreds of conversations with Farr."

My question is, Mr. Farr, did you ever promise Mr. Fitzgerald not to reveal the source of any information that he had given?

MR. COOPER: I would advise the witness to stand on Section 1070 of the Evidence Code.

THE WITNESS: I respectfully decline to answer pursuant to the provisions of Section 1070.

THE COURT: I order you to answer the question, Mr. Farr, under penalty of being found in contempt of court for failing to do so.

THE WITNES: And I must respectfully decline on the same grounds as previously stated.

MR. COOPER: If your Honor please, I offer to stipulate that the same question was put to the witness and he again respectfully declined to answer on the same grounds.

THE COURT: Very well. I find you in direct contempt of Court, Mr. Farr, for failing and refusing to answer that question.

Q BY MR. STEWART: Would you please turn to page 32, the testimony of Mr. Shinn, line 5, question by Mr. Stewart: [32]

"Q Did you ever have a discussion with Mr. Farr when he promised you or stated to you he would not divulge the source of any information that you would give him concerning the trial of the case?

"A No."

Q Is that a correct or truthful answer by Mr. Shinn?

A I respectfully decline on the grounds previously stated.

THE COURT: I order you to answer the question, Mr. Farr, under penalty of being found in contempt of Court for failing to do so.

A I reiterate my previous refusal on the same grounds, your Honor.

MR. COOPER: If your Honor please, I will stipulate that same question was propounded to the witness, and he again respectfully declined to answer the question.

THE COURT: Very well, I find you in direct contempt of Court, Mr. Farr, for failing and refusing to answer that question.

Q BY MR. STEWART: Mr. Farr, did you obtain a copy of the transcript of Virginia Graham from Mr. Shinn?

A I respectfully refuse to answer that question on the grounds previously stated.

THE COURT: I order you to answer the question, Mr. Farr, under penalty of being found in contempt of Court for failing to do so.

THE WITNESS: I repeat the refusal on the grounds previously stated. [33]

MR. COOPER: I stipulate, if your Honor please, that the same question was propounded by the Court to the witness, and the witness again respectfully declined to answer the question.

THE COURT: Very well. I find you in direct contempt of Court, Mr. Farr, for failing and refusing to answer that question.

Q BY MR. STEWART: Did you receive a copy of the transcript of Virginia Graham from Mr. Kanarek?

A I respectfully decline to answer on the grounds previously stated.

THE COURT: I order you to answer that question, Mr. Farr, under penalty of being found in contempt of court for failing to do so.

THE WITNESS: I again must respectfully decline to answer on the grounds previously stated.

MR. COOPER: I offer to stipulate, if your Honor please, that the same question was in fact propounded to the witness, and he again declined to answer for the same reasons.

THE COURT: Very well. I find you in direct contempt of Court for failing to answer that question, Mr. Farr.

Q BY MR. STEWART: Did you obtain a copy of the transcript from Mr. Kay, Mr. Farr?

A I respectfully decline to answer on the previously stated grounds.

THE COURT: I order you to answer the question, Mr. Farr, under penalty of being found in contempt of Court for failing to do so.

THE WITNESS: I again respectfully decline to answer on the [34] previously stated grounds.

MR. COOPER: I stipulate, if your Honor please, that the same question was again propounded to the witness, and he again respectfully declined to answer on the same grounds.

THE COURT: I find you in direct contempt of Court, Mr. Farr, for failing to answer that question.

Q BY MR. STEWART: Did you receive a copy of the transcript of Virginia Graham's testimony from Mr. Bugliosi?

A I respectfully decline to answer on the previously stated grounds.

THE COURT: I order you to answer the question, Mr. Farr, under penalty of being found in contempt of Court for failing to do so.

THE WITNESS: Your Honor, I must again respectfully decline to answer on the previously stated grounds.

MR. COOPER: I stipulate, if your Honor please, that the same question was again propounded to the witness, and the witness again respectfully declined to answer on the same grounds.

THE COURT: I find you in direct contempt of Court, Mr. Farr, for failing to answer that question.

Q BY MR. STEWART: Did you obtain a copy of the transcript of Virginia Graham's testimony from Mr. Musich?

A I respectfully decline to answer the question on the previously stated grounds.

THE COURT: I order you to answer the question, Mr. Farr, under penalty of being found in contempt of Court for failing to do so. [35]

THE WITNESS: I again must respectfully decline on the previously stated grounds.

MR. COOPER: I stipulate that the same question was again propounded to the witness, and the witness again respectfully declined to answer for the same reasons.

THE COURT: I find you in direct contempt of Court, Mr. Farr, for failing to answer that question.

Q BY MR. STEWART Mr. Farr, who were the parties that were the sources of the transcripts of the testimony of Virginia Graham that you received on October 7th and October 8th, 1970?

A I respectfully decline to answer on the previously stated grounds.

THE COURT: I order you to answer that question, Mr. Farr, under penalty of being found in contempt of Court for failing to do so.

THE WITNESS: I must again respectfully decline to answer on the previously stated grounds.

MR. COOPER: Stipulate that the same question was again propounded to the witness, and the witness again gave the same answer for the same reasons.

THE COURT: I find you in direct contempt of Court for failing to answer that question, Mr. Farr.

Q BY MR. STEWART: Mr. Farr, did you ever have a discussion with any of the six attorneys of record in the case, wherein you promised them that you would not reveal the source of any information they could give you concerning the trial?

MR. COOPER: If your Honor please, I believe that has been [36] asked and answered.

MR. STEWART: I think it was only directed toward one or two specific attorneys.

THE COURT: I think it was just directed to the conversations or, rather, to the testimony of Mr. Fitzgerald and Mr.—

MR. STEWART: —Shinn, I believe.

THE COURT: —Shinn.

MR. COOPER: If your Honor please, it seems to me that it's an unnecessary question. In other words the witness has testified to the conversations that he did in fact have with the persons from whom he obtained the transcript.

THE COURT: Well, there is a little more involved than that, Mr. Cooper, because, if you recall the testimony of the six attorneys on June 30th, each of them testified under oath that he made no such promise to Mr. Farr.

MR. COOPER: If your Honor please, so that your Honor may understand my philosophy in the situation, the only point of any objection that I have made has been either that it would directly divulge the source of the information, or it would tacitly, indirectly divulge the source of the information, and I feel that these questions would do the same thing, and it's only on that ground, if your Honor please, that I would instruct him not to answer those questions.

Now, If counsel has a different point of view, that is the only ground upon which I felt he has the right under the law, as I see the law, to refuse to answer the question, other than that of incrimination. [37]

THE COURT: We have the testimony of the six attorneys as I have just indicated on that point. We also have Mr. Farr's testimony on June 3rd that promises to that effect were made.

We have diametrically opposed statements by Mr. Farr and by the six attorneys.

MR. COOPER: I realize that, if your Honor please, but again if you ask about each one, and he answers truthfully, then it limits it down to the persons involved, and by a process of elimination he would be pointing the finger to the source of the information.

That is the only point of my objection, if your Honor please, and I think—of course, obviously your Honor and counsel can make any record they want, but I think the record is square, from the answers that have been given, the issues are framed very clearly.

But, obviously I mean, your Honor—counsel can ask any more questions they want.

THE COURT: I understand your position, Mr. Cooper. Will you state the question again; Mr. Stewart, do you have that in mind?

MR. STEWART: Yes.

Q At any time during the course of the trial, Mr. Farr, did you have any discussion with any of the six attorneys of record in the case, wherein you promised them—

MR. COOPER: Pardon me, counsel. You are talking about the Manson trial now?

MR. STEWART: In all cases I am talking about the Manson [38] trial.

MR. COOPER: All right.

Q BY MR. STEWART—wherein you promised if they gave you information you would not reveal the source of that information?

A Yes, I did.

Q Now, I am not directing this to the Virginia Graham transcript at this time:

Outside of the Virginia Graham transcript incident, did you have any discussion with the attorneys of record in the case?

A Did I have any discussions?

Q Discussions wherein you promised not to reveal the source of any information that they gave you?

A Yes, I did.

Q Which attorneys were those, sir?

A I respectfully decline to answer pursuant to the provisions of Section 1070 of the Evidence Code, and on the further ground it impinges on the guarantees of the First Amendment.

THE COURT: I didn't hear the question. Would you read it.

(Whereupon the reporter reads the record)

THE COURT: This question relates to material other than the Graham statements. Is that right?

MR. STEWART: That is correct, your Honor.

THE COURT: Is it relevant to this proceeding?

MR. STEWART: Well, my statement, or my question to each [39] of the six attorneys was broad, your Honor. They all denied at anytime that they discussed with Mr. Farr the fact that he would hold secret the source of any information they could give him.

Apparently Mr. Farr's answer indicates that at least one of those attorneys is not telling the truth. I am proceeding further along that line of inquiry.

He stated that he did discuss with at least one of the attorneys of record the fact that he would keep information secret, at some time; and I would like to know which attorney that is.

MR. COOPER: I think he already declined to answer that question, if your Honor please. If it is a question other than concerning this transcript, it is im-

material to the issues as I conceive them to be in this proceeding.

THE COURT: I think it is, too. I am going to sustain the objection.

MR. STEWART: Let me ask you a question that is limited directly then to the Virginia Graham transcript incident.

Q Did you have a discussion with any of the attorneys of record to the effect that if they gave you a copy of Virginia Graham's testimony, you would not reveal the source of the information?

MR. COOPER: I would object to that, if your Honor please, on the ground it has been asked and answered.

The witness has stated in connection with at least three occasions, with three attorneys of record, he did have such conversations. [40]

THE COURT: I think it's been covered, Mr. Stewart.

Q BY MR. STEWART: Which attorney was it then, Mr. Farr?

A I respectfully decline to answer on the grounds as previously stated.

MR. COOPER: I think that has implicitly been asked and answered before, if your Honor please.

THE COURT: Well, I will order Mr. Farr to answer that question, and I will change the question slightly. Which attorney or attorneys was it?

THE WITNESS: Again, your Honor, I must respectfully decline to answer on the grounds previously stated.

THE COURT: I order you to answer that question, Mr. Farr, under penalty of being found in contempt of Court for failing to do so.

THE WITNESS: And I reiterate that I must refuse or decline to answer on the grounds previously stated.

MR. COOPER: I will stipulate that it may be deemed that the same question has been propounded to the witness, and he has again respectfully declined to answer on the same grounds.

THE COURT: I find you in direct contempt of Court, Mr. Farr, for failing to answer that question.

MR. STEWART: I have no further questions, your Honor.

MR. COOPER: Does your Honor have any questions?

THE COURT: Yes, I do, Mr. Cooper.

Did you receive any of the Virginia Graham statements, Mr. Farr, from someone who was an associate of an attorney of record in the case? [41]

MR. COOPER: May I check—if your Honor please. I think you'd better decline to answer that.

THE WITNESS: I respectfully decline to answer the question on the grounds as previously stated.

THE COURT: I order you to answer that question, Mr. Farr, under penalty of being found in contempt of Court for failing to do so.

THE WITNESS: I repeat my declination to answer on the previously stated grounds.

MR. COOPER: I will stipulate, if your Honor please, that the same question was propounded to the witness, and he again respectfully declined to answer for the reasons heretofore stated.

THE COURT: I find you in direct contempt of Court, Mr. Farr, for failing to answer that question.

Did you receive a copy of the Virginia Graham statement from anyone in the office of the District Attorney of Los Angeles County other than the attorneys of

record in this case, Mr. Bugliosi, Mr. Kay and Mr. Musich?

THE WITNESS: I respectfully decline to answer on the previously stated grounds.

THE COURT: I order you to answer that question, Mr. Farr, under penalty of being found in contempt of Court for failing to do so.

THE WITNESS: I again repeat my refusal on the previously stated grounds.

MR. COOPER: I will stipulate, if your Honor please, that the same question was put to the witness, and he again [42] respectfully declined to answer for the same reasons.

THE COURT: I find you in direct contempt of Court for failing to answer that question, Mr. Farr.

Did you have a conversation with Attorney Robert Steinberg on the morning of October 8th, 1970?

THE WITNESS: Yes, I did.

THE COURT: Did the subject of the conversation relate to the Graham statement?

THE WITNESS: Yes, it did.

THE COURT: What was the conversation?

MR. COOPER: You may answer the question.

THE COURT: Let me withdraw that question and ask you another:

Who did you understand Mr. Steinberg to be representing?

THE WITNESS: It was my understanding he was an attorney representing Virginia Graham.

THE COURT: And was it your understanding that he was appearing in this court on that morning in connection with her appearance in the court?

THE WITNESS: I am not certain of that morning. your Honor. I don't think she testified on that date, but

I presume that his presence here was connected with the fact that he represented Mrs. Graham or Virginia Graham Castro.

THE COURT: Did you so understand it on that date?

THE WITNESS: Yes, your Honor, I did.

THE COURT: And, as a matter of fact, Mr. Steinberg was in chambers later in the morning on October 8th, when you [43] were present with all of the attorneys of record in the case. Is that not true?

THE WITNESS: Was Mr. Steinberg actually present at the time I was in chambers? I don't believe that he was.

THE COURT: All right. What was the conversation between you and Mr. Steinberg on October 8th, 1970?

THE WITNESS: My best recollection as to the substance of the conversation was that I did inform him that I had a copy or I might have at that time informed him I had copies, but I don't recall specifically. I think I merely told him that I had a copy of the transcript of the statement given by Virginia Graham to the District Attorney's office earlier that same week.

THE COURT: Did you tell him from whom you had obtained the statement?

THE WITNESS: I did not.

THE COURT: Did you tell him that you had obtained the statement from a lawyer in the case?

THE WITNESS: Yes, I did.

THE COURT: Did you name the lawyer?

THE WITNESS: No, I did not.

THE COURT: Did you name which side of the case he was on? That is, did you say he was a defense lawyer or a prosecutor or words to that effect?

THE WITNESS: No, I did not, although I have reason to believe from what Mr. Steinberg told your Honor that he presumed it was one side.

But I did not state at that time as to which side [44] of the case the attorney was on.

THE COURT: Mr. Farr, the Los Angeles Examiner published the story regarding the Manson trial, and specifically based upon the statements of Virginia Graham, in October of 1970, is that true?

THE WITNESS: Yes, your Honor, it is.

THE COURT: Did you write that story?

THE WITNESS: Yes, your Honor, I did.

THE COURT: And was the information contained in that story obtained solely by you from the statements that were given to you by whoever these persons are that you have been talking about here today?

THE WITNESS: The story is generally based on the transcript. There is some information in the article that is not contained in that transcript.

MR. COOPER: That you obtained from another source.

THE WITNESS: From another source or sources.

THE COURT: Well, specifically I seem to recall that in that Los Angeles Examiner article there were some references to some celebrities: Elizabeth Taylor, Frank Sinatra, and some other people whose names I do not now recall.

Were the names of these celebrities contained in the statements that you obtained from the two attorneys of record that you have testified to, and this third person, whoever that might be?

THE WITNESS: Yes, the names of Frank Sinatra, Elizabeth Taylor, Richard Burton, Steve McQueen and Tom Jones were included in that transcript. [45]

THE COURT: Do you have any further questions, Mr. Stewart?

MR. STEWART: Yes, your Honor.

BY MR. STEWART:

Q Mr. Farr, you said that you received copies of the transcript from your three sources, and then you had them duplicated, and you returned the originals to the source. Is that correct?

A That is correct.

Q Did you do the duplication yourself, or did you give it to somebody else to do?

A I duplicated the statements myself.

Q On a Xerox machine?

A Or a reproduction process machine. Its trade name would not be Xerox, I don't think, but that type of duplicating.

Q A duplicating machine—I see.

And this was done at your office?

A Not in all instances.

Q Well, did you ever use the duplication facilities of the District Attorney's office?

A No, I did not.

Q Did you ever make a statement to Mr. Fitzgerald to the effect that "You lawyers ought to watch how you duplicate your materials"?

A I did, but at a considerable different point in time than refers to this given case. It had nothing to do with the Virginia Graham transcript.

Q Did you ever indicate explicitly or by implication [46] to anyone that you obtained copies of Virginia Graham's transcript through the duplication facilities of the District Attorney's office?

A I did not.

Q Now, for the record, Mr. Farr, you do remember at this time who the sources of your information are, do you not?

A Vividly.

Q And except for the immunity you are claiming under Section 1070, you presently have the present ability to reveal the source of that information to the Court, do you not?

A Yes, I do have.

MR. STEWART: I have no further questions.

THE COURT: I have just one more, Mr. Farr: Have you ever revealed from whom you obtained the Graham statements to anyone other than your lawyer, Mr. Cooper?

THE WITNESS: I have not.

THE COURT: I have no further questions. You may step down.

MR. COOPER: If your Honor please, your Honor having found the witness guilty of several direct contempts of court, I suppose there is nothing left but for your Honor to impose his judgment at this time.

I would respectfully request of the Court that since it will be necessary for the Court or counsel—a commitment of contempt is no little job. That will take some [47] time, and since these questions present some at least new questions of law, that is, questions that have not yet been determined by our Appellate Courts, to my knowledge, I would respectfully request of the Court that whatever judgment the Court imposes, that we be given a reasonable time after we have had a copy of the commitment, to enable us to pursue our remedy, which I believe is by petition for Writ of Certiorari, so that the matter can be properly adjudicated.

And I would like to make this further statement for the record, if your Honor please:

As I have heretofore stated, I have only suggested to the witness that he respectfully decline to answer questions that would reveal either directly or indirectly the source of his information.

I have tried as best I could to stick to that principle. If there are any questions in the Court's or counsel's mind there were other than that for which he declined, actually I cannot bind either Court or counsel, but I would like them to reconsider, because that is the only ground, if your Honor please, that at least I intended that the witness decline. There were questions that would directly reveal the source of his information or, by a process of elimination, might have done it, or otherwise point the finger at his infromation. That was the purpose.

THE COURT: That was the way I understood it, Mr. Cooper.

MR. COOPER: Thank you.

THE COURT: There will be a formal written order and findings, and I think probably the best way to proceed would simply be to continue this proceeding to some agreeable date. [48]

How long will it take, Mr. Stewart?

MR. STEWART: Well, your Honor, perhaps Thursday. I did not anticipate the questions would be so many.

MR. COOPER: Now, there is one other thing, if your Honor please. Your Honor will have in mind that at the last hearing there were certain stipulations that were entered into, incorporating other parts of the record.

For example, the record of the proceedings in, I think it was October 8th or thereabouts, that should be a part of the record.

Now, whether that has to be included in the commitment I am not certain, but at least that is a part of the record that I would like, and all those stipulations were entered into at that time so that that will be a part of the record to go to the Appellate Court.

Now, whether they can be referred to in the commitment by reference to the record—at least I would like to call that to the attention of the Court and counsel at this time.

THE COURT: They should actually be a part of the commitment. I don't think the commitment can properly incorporate by reference anything else. It has to stand on its own feet.

MR. COOPER: I am aware of that, if your Honor please but I certainly would prefer it to be in the commitment.

THE COURT: With that in mind, Mr. Stewart.

MR. STEWART: I may need some more time. I also seem to recall first hearing on the third that Mr. Farr was going to [49] supply the Court with an article he wrote.

MR. FARR: There is a bit of a problem, inasmuch as there is only a microfilm.

I made the request about a week ago. There is a bit of a technical problem. They should have it within a couple of days, however.

MR. COOPER: I will stipulate, if your Honor please, at this time, that that article that appeared in the Los Angeles Herald-Examiner may be deemed a part of the record at this time, and shall be made an

official part of the record when Mr. Farr turns it over to the clerk of this court.

Now, how quickly, Mr. Farr, do you feel you can deliver that to the clerk?

MR. FARR: They told me it would be Wednesday.

MR. COOPER: Very well.

THE COURT: Well, suppose a week from Wednesday. Is that sufficient time?

MR. STEWART: I think the time is sufficient, your Honor. I understand that counsel is not objecting to delay between this hearing and the filing of the order.

THE COURT: That will be July 28th.

MR. COOPER: July 28th. Now, of course I cannot start preparing my petition until I get a copy of the commitment order, if your Honor please.

THE COURT: I understand that.

MR. COOPER: I will have to ask for time after that.

MR. STEWART: I would prefer to move it up to the 26th, if that is convenient to the Court and counsel. I really [50] don't need that much time.

THE COURT: July 26th, Mr. Cooper.

MR. COOPER: I can appear July 26th.

THE COURT: 2:00 o'clock.

MR. COOPER: 9:30?

THE COURT: It is a bad date in the morning; it is a pretrial day. We hear all the pretrial motions that day.

MR. COOPER: If your Honor please, I do not know that in this type of proceeding that—my client tells me he has to be in San Francisco in the morning, and that might be all day.

MR. FARR: I will be back by noon or shortly thereafter.

MR. COOPER: You can be here 2:00 o'clock on the 26th?

MR. FARR: Yes.

MR. COOPER: All right.

THE COURT: 2:00 o'clock on the 26th.

MR. REINHARDT: May I be heard briefly?

THE COURT: Yes. You may state your name for the record.

MR. REINHARDT: Stephen Reinhardt, representing the Los Angeles Newspaper Guild.

Your Honor, I have been waiting for an appropriate point in this proceeding. Perhaps I was under a misapprehension. I would not have been sitting here during these past two hearings except that I understood we would be granted the right to appear amicus, and to present an argument to the Court.

I had hoped that we would have an opportunity to [51] present our views before the Court found the condemnor in contempt.

MR. COOPER: Alleged condemnor.

MR. REINHARDT: He now has been found in contempt, and I assume he is now a condemnor.

THE COURT: I did not understand you were waiting in the wings, Mr. Reinhardt.

MR. REINHARDT: Yes.

THE COURT: We had rather extensive argument at the first hearing.

MR. REINHARDT: I don't believe we had any argument.

THE COURT: I mean Mr. Cooper.

MR. COOPER: I did.

THE COURT: The finding now has been made as

to the specific questions as to which Mr. Farr has been found in contempt. I would suggest that there wouldn't be much point at this time in renewing arguments that have already been made by Mr. Cooper, or even those which have not been made.

The findings have been made. You certainly may file your brief when it goes on review.

MR. REINHARDT: Well, your Honor, we will file a brief on review. I would not have been here for two days in order to file a brief on review.

My position is somewhat different from Mr. Cooper's. I realize the Court has reached its conclusion. I would like, however, for the record to show that our views, your Honor, are somewhat different from Mr. Cooper's and the Court's.

The Court made its view clear at the outset. This [52] was not a confrontation between the press and the Court.

Our view, your Honor, is that it is a direct confrontation. We are not here because we have any particular interest in the individual, in Mr. Farr, who worked for the Herald-Examiner during the strike, when this occurred.

This is a matter of principle for the newspaper profession. It does not involve Mr. Farr; it involves a very basic principle of freedom of the press.

I do not agree with some of Mr. Cooper's views as to what a proper rule is. Mr. Cooper is here to uphold the law, and has done an excellent job. He states had he been drafting some of the rules he would have differed personally; he would have drafted them differently. Nevertheless, he presented his client's view adequately and excellently.

I join in what he says except, your Honor, I can find no rational basis for the construction of the statute so that the newsman's privilege would end when he changes employment, whether he goes from one paper to another, or from a paper to the District Attorney or wherever he goes, or whether he is temporarily unemployed.

I can see no rational construction of this statute, and I heard no rational suggestion offered, that is, how a privilege can end and still be a meaningful privilege.

I don't really understand the basis of the other argument, your Honor, as to how this could be a limited privilege or under certain circumstances it could be limited, because the statute is on its face absolute.

I think your Honor is deciding an extremely essential [53] question. The Court suggested that perhaps the Legislature should take notice of this problem and correct the problem, if there is one.

That may be true, but in the meantime, your Honor, the statute is clear; there is no exception for holding a newspaper man in contempt under certain circumstances.

It is absolute. There is no limitation. It cannot possibly, under a rational construction, terminate at the end of employment.

I think we are in the same kind of area that we have been in in recent weeks with the New York Times and the Washington Post, and with CBS, and the U. S. Congress.

We are infringing on the basic right of freedom of the press by holding a newsman in contempt in violation of a clear statute.

Your Honor, I only say this at this point, because as a representative of the Newspaper Reporters who

face this common problem, this is a matter of very basic principle, I think, to the way our press operates in this country, the Court operates, and the law operates.

I would feel we would be negligent in our responsibility to the members of the press if the Los Angeles Newspaper Guild did not make its position completely clear to the Court, or in any way seem to mislead the Court as to what the basic issue here is; that it is some kind of a narrow issue of statutory construction, or that we do not present fully and as strongly as possible our view on the basic First Amendment issue. [54]

I feel an obligation to tell the Court in our view an order of the Court holding in contempt a newsman for exercising a privilege given to him by law violates the First Amendment, and interferes basically with the operation of a free press in the United States.

It is only for that reason, your Honor, that we have been here during these two hearings. As I say, it is not in sympathy with Mr. Farr by any means, not Mr. Farr as an individual, but the principle of freedom of the press, and the opportunity of newspapers to continue to publish free from Governmental restraint whether from the Attorney General of the United States, the Congress of the United States, or any Court of the United States.

And I very much appreciate, your Honor, your giving us the opportunity to appear as amicus, and I would hope, your Honor, that you would reconsider your rules thus far, and much as I sympathize, and our clients sympathize, with the Court's problem in administering order, and in its desire to obtain the facts, I hope the Court will recognize the importance to this country of a press that must be free from judicial, congressional or executive interference.

We do have a statute in California, your Honor, which recognizes that privilege, and makes the operation of the press possible in this state.

I hope your Honor, in view of the concern we have expressed, would have an opportunity to reconsider its decision and at the very least, your Honor, re-examine Section 1070 of the Code. [55]

And I would submit, your Honor, that an evaluation of that statute in light of its purpose and its intent can lead to no possible conclusion other than the conclusion that a newspaperman, whether he is still one, whether he is now one or he is in between jobs or has left his job, may not be punished with contempt for failing to disclose his source.

Thank you, your Honor.

THE COURT: Well, I have given the problem a great deal of thought, Mr. Reinhardt. Of course the question is not just whether or not the immunity extends to a person who is still a reporter. That is one question involved.

The other question is whether or not it was ever the intent of the Legislature to extend the benefits of this immunity to one who is not engaged in any legitimate news gathering capacity in the ordinary sense at all.

Of course there is no prior restraint involved here. We are not talking about the same thing as the New York Times and the Washington Post. There is an entirely different problem in this case.

But, as I mentioned at the outset, the thing that concerns me is the fact that here we have a reporter who in my opinion is not engaged in a legitimate news gathering activity. He is, in effect, subverting the lawful order of the Court, which is designed to guarantee the defendants a fair trial.

Knowing of the existence of that order, even though it doesn't specifically cover him, he knows it covers the [56] people from whom he is obtaining these statements, and I just don't think that under those circumstances it was ever the intent of the Legislature that the immunity of the newsman extends to that kind of a situation, because, if it does, as I pointed out before, the result is that publicity orders are rendered virtually worthless by the simple device of disclosing the information to a newsman.

This may delight newsmen, but it certainly does not delight judges and lawyers who are concerned with the rights of defendants in criminal cases.

There is another question, too, in my mind, one that I haven't resolved, and that is whether or not 1070 of the Evidence Code, which is a legislative enactment —it is a rule of evidence enacted by the Legislature— is in this context a violation of the doctrine of the separation of powers. Because what in effect you have is a legislative enactment, a rule of evidence imposed upon the courts to frustrate the courts in investigating a willful, what appears to be a willful violation of a lawful court order.

So I would suggest that you give some thought to that question.

MR. COOPER: Has your Honor concluded?

If your Honor please, I have no intention in regard to the matter, but on behalf of my client, he has asked me to state to the Court that it was not his intention to be willfully disobeying the order of the Court, and to call the Court's attention to the fact that the jury was sequestered. I merely made that statement for my client. [57]

MR. KLEIN: My name is Earl Klein, and I am appearing pursuant to the Court's order on behalf of Sigma Delta Chi. Of course, Sigma Delta Chi is in a sense interested in Mr. Farr, but our main interest is in the principles involved.

Since your Honor has mentioned the order re publicity, I think that the Court might re-examine that particular point, in view of what Mr. Cooper has stated regarding sequestration.

I think the whole idea of sequestering the jury is to grant a fair trial, and yet not stop the press.

Now, I for two years was a member of the State Bar Committee on Freedom Of The Press and Fair Trial, and we argued over imposing a professional rule of conduct which would in a sense, although it would be general, it would be a rule that in a sense would restrain lawyers from making comments about cases that are pending.

The Committee did agree to impose such a rule. I dissented from it, and I might say I don't know what happened, but the rule was never enacted, and I think that the Court must look carefully to see whether in fact, backing up, whether these types of publicity orders are lawful and are valid, when we consider the problem of freedom of the press, and also the question of sequestration of the jury.

Now, in connection with Section 1070, although I know that courts ordinarily will not look to constitutional questions where there is a statutory or other solution to the problem, I think that 1070 has to be construed and interpreted in the light of the First Amendment. [58]

There has been a gradual change in the appellate decisions and I would ask your Honor to read the case

that we cited in our brief, en re Taylor, which is annotated and reported in 7 ALR 3rd.

That case specifically turns down the argument about freedom of the press, and there was a question where a reporter had done a series on underworld activities and was called before the Grand Jury, and the Court—

THE COURT: Caldwell?

MR. KLEIN: No, this is en re Taylor.

Mr. Cooper has given me a Xerox'd part of the opinion. One of the things I wish to point to is the District Attorney in that case pointed out that a construction of non-disclosure of source would enable newsmen to conceal or cover up crimes, which is certainly something that runs head-on with the ability of newsmen to—not to disclose their sources.

Yet, in balancing the benefits to society, and having a reporter disclose information about possible crimes, and the rights of freedom of the press, the Court did find that the newsman's source was sacred, if we might use that term, or at least it could be held confidential.

And the Court there, although there is a specific statute in Pennsylvania where this case arises, the Court does say that a privilege of this sort, because it is involved with First Amendment rights, should not be given a strict construction, but should be given a liberal construction.

And this is an argument that we would urge upon the [59] Court, that although the rule in California generally is that testimonial privileges shall be given strict construction, in this case the First Amendment rights are involved, and the Court should give the statute a liberal construction.

Thank you very much.

THE COURT: Do you wish to be heard, Mr. Stewart?

MR. STEWART: Just briefly, your Honor. I just wish to point out En Re Taylor is a Pennsylvania case.

We also have a federal case, En Re Cepada, which interpreted 1070 and held a very strict construction of that statute. That was a case where the man was a reporter, but not on a newspaper. He was a reporter on Look Magazine. The Court said newspaper reporters employed by a newspaper; if he is employed on any

This is an exact interpretation of the precise statute we have involved. So if they want to take a liberal view, perhaps, in Pennsylvania that perhaps is within the prerogative of that Supreme Court. We already have an interpretation of this particular statute plus the fact, as I urged in my brief, that Mr. Farr does not fall within the scope of that statute because he is no longer a newspaper reporter.

So the question of whether or not he is entitled to conceal the source of a crime does not really pertain, if he doesn't fall within the precise status of individuals protected by that section.

I read counsel's brief in this matter, and I still feel the most analogous case would be the case involving [60] the husband testimonial privilege. The source is not privileged.

If Mr. Farr wanted to reveal the source from the stand today, he could do so, which is not the case with husband-wife communications or lawyer-client.

We are not dealing with a privilege, but with an immunity, and the immunity depends on the status of he who seeks the immunity.

THE COURT: Well, gentlemen, if you would like me to treat what you said as a motion to reconsider, I will do so, and rule on it. You didn't state it formally, but if that was your intent, I will deny the motion to reconsider the findings of contempt as to Mr. Farr.

We will recess at this time, unless there is something else, until next Monday, July 26th at 2:00 P.M. [61]

Superior Court of the State of California for the County of Los Angeles.

Department No. 104.

Hon. Charles H. Older, Judge.

The People of the State of California, Plaintiff, vs. Charles Manson, et al., Defendants. No. A 253,156.

State of California, County of Los Angeles—ss.

I, J. HOLLOMBE, Official Reporter of the Superior Court of the State of California, for the County of Los Angeles, do hereby certify that the foregoing 61 pages comprise a full, true and correct transcript of the proceedings had and the testimony taken in the matter of the above-entitled cause.

Dated this 22nd day of July, 1971.

/s/ J. Hollombe
Official Reporter [62]

APPENDIX "C".

Order Re Publicity.

Superior Court of the State of California for the County of Los Angeles.

People of the State of California, Plaintiffs, vs. Charles Manson, et al., Defendants. No. A 253156.

Filed: Dec. 10, 1969.

It is apparent, and this Court is going to take judicial notice of the fact, that this case has received extensive news media coverage as a direct result of its apparent public interest; further, it is equally apparent to this Court by reading various newspapers and weekly periodicals that this news media coverage is not limited to the County of Los Angeles, but has been extensive not only in the entire State of California but in the Nation as well, and of this fact the Court now takes judicial notice. This Court is of the firm conviction that the impossible task of attempting to choose between the constitutional guarantees of a free press and fair trial need not be made, but that they are compatible with some reasonable restrictions imposed upon pretrial publicity. It further appears to the Court that the dissemination by any means of public communication of any out-of-court statements relating to this case may interfere with the constitutional right of the defendants to a fair trial and disrupt the proper administration of justice. Some of the defendants now being for the first time before this Court, this Court now exercises its jurisdiction and assumes its duty to do everything within its constitutional powers to make certain that each defendant does receive a fair trial, and now issues the following orders, a violation of which will be considered as a contempt of this Court

and will result in appropriate action to punish for such contempt.

It is the order of this Court that no party to this action, nor any attorney connected with this case as defense counsel or as prosecutor, nor any other attorney associated with this case, nor any judicial attache or employee, nor any public official now holding office, including but not limited to any chief of police or any sheriff, who has obtained information related to this action, which information has not previously been disseminated to the public, nor any agent, deputy, or employee of any such persons, nor any grand juror, nor any witness having appeared before the Grand Jury in this matter, nor any person subpoenaed to testify at the trial of this matter, shall release or authorize the release for public dissemination of any purported extra judicial statement of the defendant relating to this case, nor shall any such persons release or authorize the release of any documents, exhibits, or any evidence, the admissibility of which may have to be determined by the Court, nor shall any such person make any statement for public dissemination as to the existence or possible existence of any document, exhibit, or any other evidence, the admissibility of which may have to be determined by the Court. Nor shall any such persons express outside of court an opinion or make any comment for public dissemination as to the weight, value, or effect of any evidence as tending to establish guilt or innocence. Nor shall any such persons make any statement outside of court for public dissemination as to the weight, value, or effect of any testimony that has been given. Nor shall any such persons issue any statement for public dissemination as to the identity of any prospective witness, or his probable testimony,

or the effect thereof. Nor shall any such person make any out-of-court statement for public dissemination as to the weight, value, source, or effect of any purported evidence alleged to have been accumulated as a result of the investigation of this matter. Nor shall any such person make any statement for public dissemination as to the content, nature, substance, or effect of any testimony which may be given in any proceeding related to this matter, except that a witness may discuss any matter with any attorney of record or agent thereof.

This does not include any of the following:

1. Factual statements of the accused person's name, age, residence, occupation, and family status.

2. The circumstances of the arrest, namely, the time and place of the arrest, the identity of the arresting and investigating officers and agencies, and the length of the investigation.

3. The nature, substance, and text of the charge, including a brief description of the offenses charged.

4. Quotations from, or any reference without comment to, public records of the Court in the case, or to other public records or communications heretofore disseminated to the public.

5. The scheduling and result of any stage of the judicial proceeding held in open court in an open or public session.

6. A request for assistance in obtaining evidence.

7. Any information as to any person not in custody who is sought as a possible suspect or witness, nor any statement aimed at warning the

public of any possible danger as to such person not in custody.

8. A request for assistance in the obtaining of evidence or the names of possible witnesses.

Further, this order is not intended to preclude any witness from discussing any matter in connection with the case with any of the attorneys representing the defendant or the People, or any representative of such attorneys.

It is further the order of the Court that the Grand Jury transcripts in this case not be disclosed to any person (other than those specifically mentioned in Penal Code Section 938.1) until 10 days after a copy thereof has been delivered by this Court to each defendant named in the indictment; provided, however, that if any defendant, during such time, shall move the Court that such transcript, or any portion thereof, not be available for public inspection pending trial, such time shall be extended subject to the Court's ruling on such motion.

It is further ordered that a copy of this order be attached to any subpoena served on any witness in this matter, and that the return of service of the subpoena shall also include the fact of service of a copy of this order.

This order shall be in force until this matter has been disposed of or until further order of Court.

Dated: December 10, 1969.

/s/ William B. Keene
William B. Keene
Judge of the Superior Court

Declaration of William Farr.

Superior Court of the State of California, for the County of Los Angeles.

The People of the State of California, Plaintiff, vs. Charles Manson, et al., Defendants. No. A253,156.

In response to the Order to Show Cause issued by the Honorable Charles M. Older, Judge of the above entitled court, dated May 5, 1971, I declare:

I am by profession a newspaper reporter, presently employed by the District Attorney of Los Angeles County as his Press Secretary.

My reportorial background is as follows: From 1951 through 1952 I was employed as a reporter, primarily covering sports events, for the Palo Alto Times, a daily newspaper regularly circulated in and about the city of Palo Alto, California, and its environs; from 1953 through 1954 I was employed as the editor of the Northern California Tennis Magazine, a monthly magazine being a regional publication of the United States Lawn Tennis Association; from February, 1954 through February, 1956, I was in the United States Marine Corps. During my period of service with the Marine Corps I was assigned to and worked on the base newspaper at the El Toro Marine Base and the Armed Forces newspaper in Los Angeles until I received my Honorable Discharge in 1956.

From March, 1956 to September of 1968, a period of twelve years, I was employed as a reporter for the Santa Ana Register, a daily newspaper circulated in and about the County of Orange, California. During said period of employment I covered the courthouse beat for said newspaper for approximately five years.

From the period from September, 1968 to July, 1969, I was employed as an investigator for an attorney.

From July, 1969 to February 26, 1971, I was employed as a reporter for the Los Angeles Herald Examiner, a daily newspaper of general circulation throughout the City and County of Los Angeles and elsewhere in the State of California.

In my present employment as Press Secretary for the District Attorney of Los Angeles County it is essential that I maintain harmonious relationships with reporters not only of daily and weekly newspapers in and about the city and county of Los Angeles, but during major trials, representatives of all media throughout the United States.

It is also essential that I maintain harmonious relationships with editorial staffs of all the news media.

Notwithstanding that my present employment is that of Press Secretary for the Los Angeles County District Attorney, I maintain my membership in Sigma Delta Chi, a national professional newspaper fraternity. It is my intention at sometime in the future to return to employment as a newspaper reporter, as my ambition is to continue in the newspaper field and I consider my present position added training and experience in the furtherance of my professional goals.

Within hours after the discovery of the bodies of the deceased persons, alleged victims of the above entitled defendants, I was assigned by Tom Caton, the Executive City Editor of the Herald Examiner, to cover this case, and from that time until my resignation from the Herald Examiner to on or about February

26, 1971, I covered on a full time basis the investigatory, pretrial and trial proceedings in the above entitled cause, writing stories on a daily basis for my said newspaper.

Prior to October 8, 1970, I obtained from confidential sources a transcript of an alleged statement of one Virginia Graham relating to her conversations with one of the defendants in the above entitled cause, to wit: one Susan Atkins. I gave my explicit promise to said sources that I would never divulge the source of my information and implicitly the promise of my said newspaper. In giving said promise, I was aware that there existed in the State of California a statute giving to a newspaper reporter a privilege or immunity from being found in contempt of court for refusing to reveal the sources of all information so obtained. At said time I was generally aware of the Canons of Ethics of newspapermen as promulgated by the various newspaper guilds and organizations, and in giving said promise I verily believed that I was conforming to the laws of this State.

On or about October 8, 1970, I was informed that I had been invited by Judge Charles H. Older, Judge presiding at the Manson trial, to his chambers in Department 104 of said court. An official transcript of the proceedings in chambers at which I was present was reported and transcribed and are incorporated herein by reference thereto.

In Judge Older's chambers Judge Older asked me in substance if I would feel that I was in a position to reveal who had handed or furnished me a copy of a statement of Virginia Graham relating to her conversations with Susan Atkins.

I replied in part to Judge Older as follows:

> "As to from whom I received it, I would invoke Section 1070. I think maybe the company would not want me to discuss it this far."

And further:

> THE COURT "Can you tell us whether or not you received this copy of her statement from any attorney connected with this case? Can you go that far or not?
>
> MR. FARR: "I'd better invoke Section 1070 there."
>
> . . .
>
> MR. FARR: "I will inform them, if that will help at all and I told the City Editor that I might in fact be confronted with a situation where the court might want to know. As to whether they would follow my advice or whether in fact they would follow your dictate remains an open question I think."

Thereafter I conferred with Tom Caton, my Executive City Editor, and informed him of the substance of what occurred in chambers and he informed and instructed me in substance that I should not reveal the source of my information and that I should invoke the provisions of 1070 of the Evidence Code.

Thereafter I returned to the chambers of Judge Older and the proceedings reported beginning at page 13358 of the transcript through 13359 occurred, which are included as Exhibit "B" in the Declaration of Donald K. Byrne, Assistant County Counsel, in his declaration of May 5, 1971, incorporated herein by reference.

At said time I informed the Court as follows: (Page 13358, line 6)

"I've got an answer only on one of the questions. The question as to whether we were willing to waive the privilege.

"The company feels that we cannot even, under the request made under the broader interests of justice, they feel we cannot waive 1070. They instruct me not to do so.

"As to when or if we will use it, that decision has not been made. It is almost certain that it will be used."

As indicated above, when I claimed the privilege of Section 1070 of the Evidence Code, I did so not only for myself personally, but also on behalf of my employer the Los Angeles Herald Examiner. That is to say: Its Publisher, George Hearst, Jr., its Executive City Editor, Tom Caton, I as a reporter, and other persons connected with and employed by said newspaper.

Notwithstanding my change of employment, I still feel bound in conscience to the ethics of my profession and my responsibility to my former employer to maintain the same position, to wit: To invoke the provisions of Section 1070 of the Evidence Code. To do otherwise in my opinion would be to violate the ethics of my profession, the law of California and my own conscience. To violate my word and that of my former employer would destroy my relationships in my present position, would cause me irrevocable damage in the future and would prevent me from ever obtaining employment with another newspaper, news service or radio or TV station.

More importantly, based upon my experience as a newspaper reporter, it would contravene the provisions of the First Amendment in that my future sources of confidential information and news would dry up. No one could rely upon my word or the word of other news reporters and it would have a marked tendency to destroy my usefulness as a news gatherer.

I declare under the pains and penalties of perjury that the foregoing is true and correct.

Executed on this 28th day of May, 1971, at Los Angeles, California.

/s/ William Farr
WILLIAM FARR

APPENDIX "D".

Findings and Order Adjudging Contempts Committed in the Immediate View and Presence of the Judge; Order of Commitment.

Superior Court of the State of California for the County of Los Angeles.

In the Matter of William T. Farr, In re Contempt. No. A 253,156.

Original Filed: 7-28-71.

Upon noticed motion of this Court, hearings were held on June 3, June 30, and July 19, 1971, for the purpose of ascertaining the identity of the person or persons who committed acts in violation of the Court's Order Re Publicity made and entered in the case of People vs. Manson, et al., A253,156. After considering the evidence introduced at said hearings, affidavits filed with the Court, and the Order Re Publicity, the Court makes the following findings and order:

1. On December 10, 1969, the Court made and entered an Order Re Publicity in the case of People vs. Manson, et al., A253,156. The aforesaid order specifically prohibited any attorney for any part to that case, court employees or attaches, or witnesses from releasing for public dissemination the contents or nature of testimony that might be given in the trial. This order is attached hereto as Exhibit A. The Court finds that said Order was in force at all times mentioned herein.

2. The following named persons were attorneys of record on October 7, 1970, in the case of People vs.

Manson, et al., A253,156, and at that time were subject to the provisions of the Order Re Publicity made and entered in that case:

Stephen R. Kay, Deputy District Attorney
Vincent Bugliosi, Deputy District Attorney
Donald A. Musich, Deputy District Attorney
Daye Shinn, Attorney for Susan Atkins
I. A. Kanarek, Attorney for Charles Manson
Paul J. Fitzgerald, Attorney for Patricia Krenwinkel
Ronald Hughes, Attorney for Leslie Van Houten

3. On October 5, 1970, a transcript of the proposed testimony of Virginia Graham, a prospective witness for the prosecution in the case of People vs. Charles Manson, A253,156, was prepared by Stephen R. Kay, Deputy District Attorney. This transcript was prepared prior to any testimony by Miss Graham in open court and contained statements by Miss Graham that would be her probable testimony in the proceeding. Copies of this transcript of the complete statement of Virginia Graham were made and distributed to each of the aforesaid attorneys of record in the case. Aside from the copy given to the Court, the aforesaid attorneys were the only parties who received a copy of this transcript. At the time the copies of the transcript were distributed to the attorneys of record, the admissibility of the statements therein had not been determined by the Court. In fact, certain portions of said transcript contained statements by Miss Graham that implicated Susan Atkins and other co-defendants in the case of People vs. Charles Manson, et al., A253,156, that were not subsequently testified to by Miss Graham when she testified in open court on October 10, 1970. The Order Re Publicity prohibited all of the aforesaid at-

torneys from revealing or releasing all or any portions of said transcript for public dissemination.

4. It appeared to the Court after considering the testimony of William Farr in chambers on October 8, 1970, and upon reading the affidavits of Donald Byrne and Robert Steinberg, that the Order Re Publicity had been violated by one or more of the attorneys in the case subject to the Order and that good cause existed for a further inquiry for the purpose of ascertaining the identity of said person or persons.

On October 8, 1970, William Farr was employed as a newspaper reporter. It was not until after the conclusion of the trial in People vs. Charles Manson, et al., that the Court learned, on or about May 5, 1971, that William Farr was no longer employed as a newspaper reporter but was, in fact, currently employed by the District Attorney's Office. It therefore appeared to the Court that Mr. William Farr possessed relevant personal knowledge of the identity of said person or persons and that William Farr should be ordered to appear before the Court as a witness.

5. Upon notice duly given, hearings were held on June 3, 1971, June 30, 1971, and July 19, 1971, for the purpose of ascertaining the identity of the person or persons acting in violation of the Court's Order Re Publicity. Mr. William Farr appeared and testified pursuant to Order of the Court on June 3 and July 19, 1971, and was represented by Counsel.

6. At the hearing on June 3, 1971, Mr. Farr introduced into evidence a Declaration in which he stated that prior to October 8, 1970, he obtained from confidential sources a transcript of the complete testimony of Virginia Graham taken on October 5, 1970. Mr. Farr further stated in said Declaration that he

was no longer employed as a newspaper reporter but was presently employed as the Press Secretary for the District Attorney of Los Angeles County.

7. On June 3, 1971, Mr. Farr testified under oath in court as follows:

Reporter's Transcript, page 32, lines 20-27.

Q. "Mr. Farr, by way of clarification of the previous question, you stated in your Declaration that you obtained from confidential sources the transcript of Miss Virginia Graham's testimony. Did you receive the information from one or more of the attorneys of record in this case?

A. "Yes, I did."

8. On June 30, 1971, all of the aforesaid attorneys of record in the case of People vs. Charles Manson, et al., A253,156, with exception of Ronald Hughes, who was deceased, appeared in court and testified under oath in the matter. Each of said attorneys denied releasing or giving to William Farr any transcript of Virginia Graham's testimony of October 5, 1970.

9. On July 19, 1971, William Farr testified under oath in court as follows:

Reporter's Transcript, page 13, lines 26 thru 32, page 14, lines 1 thru 9.

Q. BY MR. STEWART: "By way of clarification, then, Mr. Farr, at least two of the sources of Virginia Graham's transcript were attorneys of record in the case of People versus Manson?

A. "That would be correct.

Q. "By attorney of record, are you referring to an attorney who is actually on the record as having made a personal appearance in this court in the case of People versus Manson?

A. "Yes, I am.

THE COURT: "Specifically, are you referring to those six attorneys I named just a few moments ago?

A. "I am specifically referring to that group."

Reporter's Transcript, page 16, line 24, to page 17, line 3.

Q. "And all three copies of the transcript from the three different individuals you testified to were received prior to the time you wrote your article in the *Herald-Examiner* on October 9th?

A. "That is correct.

Q. "Which was also prior to the time that Virginia Graham testified in open court. Is that correct?

A. "That would be correct also."

Reporter's Transcript, page 23, line 25, to page 24, line 2.

THE COURT: "What he asked you was whether or not the two copies you received on October 7th were received from the attorneys of record in the case.

"Is that right, Mr. Stewart?

MR. STEWART: "That is correct.

THE WITNESS: "Yes, sir, they were."

Reporter's Transcript, page 45.

THE COURT: "Mr. Farr, the Los Angeles *Examiner* published the story regarding the Manson trial, and specifically based upon the statements of Virginia Graham, in October of 1970. is that true?

THE WITNESS: "Yes, your Honor, it is.

THE COURT: "Did you write that story?

THE WITNESS: "Yes, your Honor, I did.

THE COURT: "And was the information contained in that story obtained solely by you from the statements that were given to you by whoever these persons are that you have been talking about here today?

THE WITNESS: "The story is generally based on the transcript. There is some information in the article that is not contained in that transcript.

MR. COOPER: "That you obtained from another source.

THE WITNESS: "From another source or sources.

THE COURT: "Well, specifically I seem to recall that in that Los Angeles *Examiner* article there were some references to some celebrities: Elizabeth Taylor, Frank Sinatra, and some other people whose names I do not now recall.

"Were the names of these celebrities contained in the statements that you obtained from the two attorneys of record that you have testified to, and this third person, whoever that might be?

THE WITNESS: "Yes, the names of Frank Sinatra, Elizabeth Taylor, Richard Burton, Steve McQueen and Tom Jones were included in that transcript.

10. From the foregoing testimony and the affidavit of William Farr, the Court finds that the Court's order Re Publicity has been willfully violated by one or more of the individuals subject to said Order; that William Farr has personal knowledge of the identity of said persons who gave him a copy of the transcript of Vir-

ginia Graham's proposed testimony in violation of the Order Re Publicity; and that William Farr has the present ability to reveal to the Court the identity of said persons.

11. On July 19, 1971, Mr. Farr testified under oath in court as follows:

Reporter's Transcript, page 4, lines 21-27

BY MR. STEWART:

Q. "Mr. Farr, at the hearing on June 3rd, 1971, I believe you testified that you were no longer a reporter employed by a newspaper.

A. "That is correct.

Q. "Now, is that correct today as well?

A. "That is still correct, yes."

From the foregoing testimony of Mr. Farr, the Court finds that at the time of the hearing on July 19, 1971, Mr. Farr was not a newspaper reporter connected with or employed upon a newspaper, nor was he a newspaper reporter in any capacity.

12. On July 19, 1971, while the Court was in session and while William Farr was being examined under oath as a witness, the following questions were asked Mr. Farr, and each and every question he refused to answer. In each instance as indicated below, the Court ordered Mr. Farr to answer the question and warned him that his failure to do so would be a direct contempt of the Court. Mr. Farr refused and continues to refuse to answer said questions.

Reporter's Transcript, page 8, lines 5-25

Q. BY MR. STEWART: "Did you receive them all at the same time?

A. "The answer is no.

Q. "Did you receive them all the same day?

A. "To the best of my recollection, yes.

Q. "Did the transfer take place in this building, The Hall of Justice?

A. "I respectfully decline to answer pursuant to the provisions of Section 1070 of the Evidence Code and on the further ground that it is an impingement on the First Amendment.

THE COURT: 'I order you to answer the question, Mr. Farr, under penalty of being found in contempt of Court for failing to do so.

MR. COOPER: "If your Honor please, I will stipulate that the same question has in fact been propounded to the witness again, and again, in the light of the Court's admonition, he will still respectfully decline to answer on the same grounds.

THE WITNESS: "That is correct.

THE COURT: "I find you in direct contempt of Court, Mr. Farr, for failing to answer that question—for refusing to answer that question."

Reporter's Transcript, page 16, lines 1-18.

THE COURT:

Q. "Was the third person from whom you received the statement also an attorney of record in the case?

THE WITNESS: "I respectfully decline to answer on the previously stated grounds.

THE COURT: "I can't see any basis whatever for refusing to answer that question. You already stated that two of them are attorneys of record.

"I order you to answer the question, Mr. Farr, under penalty of being found in contempt of Court for failing to do so.

MR. COOPER: "I will stipulate that the same question has been propounded to the witness and that he has declined to answer on the same grounds, your Honor.

THE COURT: "I find you in direct contempt of Court for failing and refusing to answer that question."

Reporter's Transcript, page 18, line 25, to page 19, line 25.

Q. BY MR. STEWART: "Was the actual transcript given you by the three sources transferred to you personally, Mr. Farr?

A. "Yes, it was.

Q. "Was it a face-to-face encounter with each of the three sources?

A. "In one instance it was not.

Q. "So, in two instances it was a face-to-face encounter with the individual in question?

A. "That is correct.

Q. "In the third case was it transferred by messenger or left—

"First, was it transferred by messenger?

A. "No, it was not.

Q. "Was it left at a place where you could pick it up?

A. "Yes, it was.

Q. "Where was it left?

A. "I respectfully decline to answer the question on the grounds previously stated.

THE COURT: "I order you to answer the question, Mr. Farr, under penalty of being found in contempt of court for failing to do so.

MR. COOPER: "If your Honor please, I will stipulate that the question has been propounded

to the witness, and he has again declined to answer on the same grounds.

THE COURT: "Do you refuse to answer the question on the same grounds?

THE WITNESS: "Yes, your Honor.

THE COURT: "All right. I find you in direct contempt of court for failing and refusing to answer that question."

Reporter's Transcript, page 30, line 17 to page 31, line 3.

Q. BY MR. STEWART: "Well, then, did Mr. Fitzgerald give you a copy of the transcript of Virginia Graham's testimony?

A. "I respectfully decline to answer on the same ground as previously stated.

THE COURT: "I order you to answer the question, Mr. Farr, under penalty of being found in contempt of Court for failing to do so.

THE WITNESS: "And I must again respectfully decline to answer on the prevous grounds.

MR. COOPER: "If your Honor please, I will offer to stipulate that the same question was propounded to him, and he gave the same answer.

THE COURT: "Very well. I find you in direct contempt of Court for refusing and failing to answer that question."

Reporter's Transcript, page 33, line 20 to page 34, line 6

Q. BY MR. STEWART: "Mr. Farr, did you obtain a copy of the transcript of Virginia Graham from Mr. Shinn?

A. "I respectfully refuse to answer that question on the grounds previously stated.

THE COURT: "I order you to answer the question, Mr. Farr, under penalty of being found in contempt of Court for failing to do so.

THE WITNESS: "I repeat the refusal on the grounds previously stated.

MR. COOPER: "I stipulate, if your Honor please, that the same question was propounded by the Court to the witness, and the witness again respectfully decline to answer the question.

THE COURT: "Very well. I find you in direct contempt of Court, Mr. Farr, for failing and refusing to answer that question."

Reporter's Transcript, page 34, lines 7-20.

Q. BY MR. STEWART: "Did you receive a copy of the transcript of Virginia Graham from Mr. Kanarek?

A. "I respectfully decline to answer on the grounds previously stated.

THE COURT: "I order you to answer that question, Mr. Farr, under penalty of being found in contempt of court for failing to do so.

THE WITNESS: "I again must respectfully decline to answer on the grounds previously stated.

MR. COOPER: "I offer to stipulate, if your Honor please, that the same question was in fact propounded to the witness, and he again declined to answer for the same reasons.

THE COURT: "Very well. I find you in direct contempt of Court for failing to answer that question, Mr. Farr."

Reporter's Transcript, page 34, line 21, to page 35, line 6.

Q. BY MR. STEWART: "Did you obtain a copy of the transcript from Mr. Kay, Mr. Farr?

A. "I respectfully decline to answer on the previously stated grounds.

THE COURT: "I order you to answer the question, Mr. Farr, under penalty of being found in contempt of Court for failing to do so.

THE WITNESS: "I again respectfully decline to answer on the previously stated grounds.

MR. COOPER: "I stipulate, if your Honor please, that the same question was again propounded to the witness, and he again respectfully declined to answer on the same grounds.

THE COURT: "I find you in direct contempt of Court, Mr. Farr, for failing to answer that question."

Reporter's Transcript, page 35, lines 7-21

Q. BY MR. STEWART: "Did you receive a copy of the transcript of Virginia Graham's testimony from Mr. Bugliosi?

A. "I respectfully decline to answer on the previously stated grounds.

THE COURT: "I order you to answer the question, Mr. Farr, under penalty of being found in contempt of Court for failing to do so.

THE WITNESS: "Your Honor, I must again respectfully decline to answer on the previously stated grounds.

MR. COOPER: "I stipulate, if your Honor please, that the same question was again pro-

pounded to the witness, and the witness again respectfully declined to answer on the same grounds.

THE COURT: "I find you in direct contempt of Court, Mr. Farr, for failing to answer that question."

Reporter's Transcript, page 35, line 22 to page 36, line 7.

Q. BY MR. STEWART: "Did you obtain a copy of the transcript of Virginia Graham's testimony from Mr. Musich?

A. "I respectfully decline to answer the question on the previously stated grounds.

THE COURT: "I order you to answer the question, Mr. Farr, under penalty of being found in contempt of Court for failing to do so.

THE WITNESS: "I again must respectfully decline on the previously stated grounds.

MR. COOPER: "I stipulate that the same question was again propounded to the witness, and the witness again respectfully declined to answer for the same reasons.

THE COURT: "I find you in direct contempt of Court, Mr. Farr, for failing to answer the question."

Reporter's Transcript, page 36, lines 8-23

Q. BY MR. STEWART: "Mr. Farr, who were the parties that were the sources of the transcripts of the testimony of Virginia Graham that you received on October 7th and October 8th, 1970?

A. "I respectfully decline to answer on the previously stated grounds.

THE COURT: "I order you answer that question, Mr. Farr, under penalty of being found in contempt of Court for failing to do so.

THE WITNESS: "I must again respectfully decline to answer on the previously stated grounds.

MR. COOPER: "Stipulate that the same question was again propounded to the witness, and the witness again gave the same answer for the same reasons.

THE COURT: "I find you in direct contempt of Court for failing to answer that question, Mr. Farr."

Reporter's Transcript, page 40, line 18 to page 41, line 22

MR. STEWART: "Let me ask you a question that is limited directly then to the Virginia Graham transcript incident.

Q. "Did you have a discussion with any of the attorneys of record to the effect that if they gave you a copy of Virginia Graham's testimony, you would not reveal the source of the information?

MR. COOPER: "I would object to that, if your Honor please, on the ground it has been asked and answered.

"The witness has stated in connection with at least three occasions, with three attorneys of record, he did have such conversations.

THE COURT: "I think it's been covered, Mr. Stewart.

Q. BY MR. STEWART: "Which attorney was it then, Mr. Farr?

A. "I respectfully decline to answer on the grounds as previously stated.

MR. COOPER: "I think that has implicitly been asked and answered before, if your Honor please.

THE COURT: "Well, I will order Mr. Farr to answer that question, and I will change the question slightly.

"Which attorney or attorneys was it?

THE WITNESS: "Again, your Honor, I must respectfully decline to answer on the grounds previously stated.

THE COURT: "I order you to answer that question, Mr. Farr, under penalty of being found in contempt of Court for failing to do so.

THE WITNESS: "And I reiterate that I must refuse or decline to answer on the grounds previously stated.

MR. COOPER: "I will stipulate that it may be deemed that the same question has been propounded to the witness, and he has again respectfully declined to answer on the same grounds.

THE COURT: "I find you in direct contempt of Court, Mr. Farr, for failing to answer that question."

Reporter's Transcript, page 41, line 23 to page 42, line 15.

MR. STEWART: "I have no further questions, your Honor.

MR. COOPER: "Does your Honor have any questions?

THE COURT: "Yes I do, Mr. Cooper.

"Did you receive any of the Virginia Graham

statements, Mr. Farr, from someone who was an associate of an attorney of record in the case?

MR. COOPER: "May I check—if your Honor please.

"I think you'd better decline to answer that.

THE WITNESS: "I respectfully decline to answer the question on the grounds as previously stated.

THE COURT: "I order you to answer that question, Mr. Farr, under penalty of being found in contempt of Court for failing to do so.

THE WITNESS: "I repeat my declination to answer on the previously stated grounds.

MR. COOPER: "I will stipulate, if your Honor please, that the same question was propounded to the witness, and he again declined to answer for the reasons heretofore stated.

THE COURT: "I find you in direct contempt of Court, Mr. Farr, for failing to answer that question."

Reporter's Transcript, page 42, line 16 to page 43, line 3.

THE COURT: "Did you receive a copy of the Virginia Graham statement from anyone in the Office of the District Attorney of Los Angeles County other than the attorneys of record in this case, Mr. Bugliosi, Mr. Kay and Mr. Musich?

THE WITNESS: "I respectfully decline to answer on the previously stated grounds.

THE COURT: "I order you to answer that question, Mr. Farr, under penalty of being found in contempt of Court for failing to do so.

THE WITNESS: "I again repeat my refusal on the previously stated grounds.

MR. COOPER: "I will stipulate, if your Honor please, that the same question was put to the witness, and he again respectfully declined to answer for the same reasons.

THE COURT: "I find you in direct contempt of Court for failing to answer that question, Mr. Farr."

The Court finds that each and every question asked William Farr as set forth above was relevant and material to the issue before the Court; that William Farr had the knowledge and ability to answer each and every question at the time it was asked; that William Farr had knowledge of the Court's Orders to answer said questions; and that William Farr willfully refused to answer said questions in disobedience of said orders. The Court finds that at the time the above questions were asked, Mr. Farr was not a reporter connected with or employed upon a newspaper, nor a reporter in any capacity, and that he is not entitled to claim immunity provided in Evidence Code Section 1070 and, further, that he is not entitled to refuse to answer the above questions on the basis of either Evidence Code Section 1070 or the First Amendment to the United States Constitution.

13. On June 3, 1971, William Farr testified under oath as follows:

Reporter's Transcript, page 10, line 25 to page 11, line 17

Q. BY MR. STEWART: "Now, Mr. Farr, were you covering the trial for the *Herald-Examiner* from its very beginning?

A. "Yes, I did.

Q. "And you were familiar with the Order Re Publicity issued by the Court?

A. "Yes, I was.

Q. "Did you know whether or not the source of your information, as stated in your Declaration, was subject to the Order Re Publicity at the time he gave you the transcript?

A. "May I confer with counsel?

THE COURT: "Yes."

(Off the record discussion between the witness and Mr. Cooper.)

MR. COOPER: "May we have that question re-read?

THE COURT: "Read the question."

(Whereupon the reporter reads the pending question.)

THE WITNESS: "I think I can answer that by stating that I was aware that the attorneys in the case were subject to the gag order."

On July 19, 1971, William Farr testified under oath as follows:

Reporter's Transcript, page 17, line 23 to page 19, line 5.

MR. STEWART: "I don't believe I asked him if the source of the information knew he was subject to the order. I wanted to know if Mr. Farr knew the person was one of the parties covered by the order.

MR. COOPER: "I would stipulate, if your Honor please, that he was covered by the order.

THE WITNESS: "I misunderstood the question. Yes, I did know that.

Q. BY MR. STEWART: "You know that the third source of information was covered by the Court's Order Re Publicity?

A. "I presume so. Yes, I did have knowledge."

Reporter's Transcript, page 20, lines 3-15.

Q. "In any of the three cases, three instances where you received a copy of the transcript, did you initially contact the source and request a copy of the transcript, or did the source first contact you?

MR. COOPER: "Pardon me, if your Honor please, I think I want to state this on the record with your permission.

"I have instructed the witness that he could decline to answer this question on the ground that his testimony might tend to incriminate him, but he decided to waive that. I shouldn't say waive it, but he is not going to urge that ground.

THE WITNESS: "In all three instances, I made the initial approach."

Reporter's Transcript, page 9, line 11 to page 10, line 12.

Q. BY MR. STEWART: "Mr. Farr, in your Declaration that you filed on May 28th, 1971, you stated that you gave your explicit promise to said sources that 'I would never divulge the source of my information, and, implicitly, the promise of my said newspaper."

"Is that statement correct?

A. "Yes, it is.

Q. "Did you give this exclusive promise face to face with the source of the information?

A. "The answer would not be the same to all parties involved.

Q. "Well, to any of the parties involved, was your promise made face to face with that person?

A. "Yes, it was.

Q. "As to how many of those parties was your promise made face to face?

A. "Two of the three.

Q. "And was the third one made by telephone or some means of communication?

A. "This was made by telephone.

Q. "And were these promises made prior to the receipt of the transcript of Virginia Graham?

A. "Either prior to or—

MR. COOPER: "—contemporaneously?

THE WITNESS: "—contemporaneously. I don't specifically recall, but certainly within a very short period of time.

Q. BY MR. STEWART: "But as to all three of the sources of your transcript, you did make an explicit promise not to reveal the source?

A. "Yes, sir, that is correct."

Reporter's Transcript, page 24, line 28 to page 25, line 9.

Q. "When you received the copies from the source or sources, rather from all three sources, was it with the understanding between you and the source that you would make a copy of that transcript and return the original to the party?

A. "Yes, it was.

Q. "Did all three sources insist on that as a condition for giving you the transcript?

A. "I don't believe so. I think I simply suggested that that would be the best method."

14. From the foregoing testimony of William Farr, as well as from the testimony set forth elsewhere in this Order, the Court finds that William Farr at all times had knowledge that each of the parties from whom he received the transcript of Virginia Graham's testimony of October 5, 1970, were subject to the Order Re Publicity and had knowledge that by giving him said transcript said parties willfully violated the Order Re Publicity in contempt of the Court. The Court further finds that William Farr, with full knowledge that each of the parties that released to him a copy of the transcript was subject to the Order Re Publicity and was specifically prohibited by said Order from releasing or revealing to him the contents of said transcript, actively solicited and requested each of said parties to give him a copy of said transcript in violation of said Order Re Publicity. The Court further finds that William Farr entered into an explicit agreement with each of said parties wherein he promised each of them that he would, if they gave him a copy of the transcript of Virginia Graham's testimony, refuse to reveal the source of said transcripts and would conceal the identity of each of said persons acting in willful violation of the Court's lawful Order Re Publicity. By so doing, the Court finds that William Farr, knowingly and willfully, actively aided, assisted, abetted and participated with each of said parties in procuring the copies of said transcript in violation of the Court's Order Re Publicity.

15. The Court finds that William Farr, by soliciting the transcripts as aforesaid and by assisting and participating with said persons subject to the Order Re Publicity who were committing acts in violation of said Lawful Order, willfully and knowingly interfered with the proceedings and lawful orders of the Court which the Court finds in each instance interfered with the due administration of justice.

16. The Court finds that William Farr, by committing the acts as set forth above, and by soliciting a willful violation of a lawful court order, and by assisting and participating with three parties subject to the lawful Order of the Court in willfully violating said Order, may not now refuse to disclose the identities of said parties when ordered to do so by the Court and is not entitled to refuse to answer said questions or to claim or be entitled to an immunity pursuant to the provisions of Evidence Code Section 1070 regardless of his status as a reporter on the date he received the transcripts or any other date and time mentioned in these Findings and Order.

17. THE COURT HEREBY FINDS AND IT IS ORDERED, ADJUDGED AND DECREED that William Farr, by his willful refusal to answer each of the aforesaid questions set forth in paragraph 12 herein in disobedience of the Court's orders to do so and with full knowledge of said orders, committed as to each question that he refused to answer a separate, direct contempt of the Court in the immediate view and presence of the judge; William Farr is hereby held to be in direct contempt of the Court for each and every question that he willfully refused to answer as set forth in paragraph 12 herein.

18. The Court finds that William Farr has the present ability and power to perform the act, or acts, of answering each of the aforesaid questions that he has refused to answer; that since each of said contempts by William Farr consists of an omission to perform an act which is yet in the power of William Farr to perform, it is THEREFORE ORDERED, ADJUDGED AND DECREED that William Farr be imprisoned until he shall consent to appear in court and to answer under oath each and every question specifically set forth below, and as specifically set forth in the following Order of Commitment.

CONTEMPT FINDING NUMBER ONE

Q. Did the transfer (of the transcripts you received from the parties subject to the Order Re Publicity) take place in this building, The Hall of Justice?

CONTEMPT FINDING NUMBER TWO

Q. Was the third person from whom you received the statement (transcript of Virginia Graham's testimony on October 5, 1970) also an attorney of record in the case?

CONTEMPT FINDING NUMBER THREE

Q. Where was the copy of the transcript of Virginia Graham's testimony of October 5, 1971, that was not personally given to you by the source, left for you to pick up?

CONTEMPT FINDING NUMBER FOUR

Q. Did Mr. Fitzgerald give you a copy of the transcript of Virginia Graham's testimony?

CONTEMPT FINDING NUMBER FIVE

Q. Did you obtain a copy of the transcript of Virginia Graham from Mr. Shinn?

CONTEMPT FINDING NUMBER SIX

Q. Did you receive a copy of the transcript of Virginia Graham from Mr. Kanarek?

CONTEMPT FINDING NUMBER SEVEN

Q. Did you obtain a copy of the transcript from Mr. Kay?

CONTEMPT FINDING NUMBER EIGHT

Q. Did you receive a copy of the transcript of Virginia Graham's testimony from Mr. Bugliosi?

CONTEMPT FINDING NUMBER NINE

Q. Did you obtain a copy of the transcript of Virginia Graham's testimony from Mr. Musich?

CONTEMPT FINDING NUMBER TEN

Q. Who were the parties that were the sources of the transcripts of the testimony of Virginia Graham that you received on October 7th and October 8th, 1970?

CONTEMPT FINDING NUMBER ELEVEN

Q. Which attorney or attorneys of record was it that you told that you would not reveal the source if they gave you a copy of the transcript of Virginia Graham's testimony?

CONTEMPT FINDING NUMBER TWELVE

Q. Did you receive any of the Virginia Graham statements from someone who was an associate of an attorney of record in the case?

CONTEMPT FINDING NUMBER THIRTEEN

Q. Did you receive a copy of the Virginia Graham statement from anyone in the Office of the District Attorney of Los Angeles County other than the attorneys of record in this case, Mr. Bugliosi, Mr. Kay or Mr. Musich?

DATED: 7-28-71.

CHARLES H. OLDER
Judge of the Superior Court

19. Pursuant to the foregoing Findings and Orders, the Court hereby makes and issues the following Order of Commitment:

ORDER OF COMMITMENT

The People of the State of California to the Sheriff of Los Angeles County:

WHEREAS on July 19, 1971, during a hearing set by the Court and in the immediate view and presence of the Court, and while the Court was in session, William Farr was duly sworn as a witness and, while being examined as a witness, he refused to answer each of the material and relevant questions set forth in paragraph 12 herein, notwithstanding he was then and there ordered by the Court to answer said questions, and he still willfully refuses to answer said questions, and

WHEREAS the Court, by these Findings and Orders, has adjudged and decreed that William Farr is guilty of a separate, direct contempt of the Court on each and every instance that he willfully refused to answer the questions set forth herein and has ordered that William Farr be imprisoned, pursuant to CCP

§1219, in the County Jail of Los Angeles County until he consents to appear in court and answer under oath each and every question set forth below.

QUESTION NUMBER ONE

Did the transfer (of the transcripts you received from the parties subject to the Order Re Publicity) take place in this building, The Hall of Justice?

QUESTION NUMBER TWO

Was the third person from whom you received the statement (transcript of Virginia Graham's testimony on October 5, 1970) also an attorney of record in the case?

QUESTION NUMBER THREE

Where was the copy of the transcript of Virginia Graham's testimony of October 5, 1971, that was not personally given to you by the source, left for you to pick up?

QUESTION NUMBER FOUR

Did Mr. Fitzgerald give you a copy of the transcript of Virginia Graham's testimony?

QUESTION NUMBER FIVE

Did you obtain a copy of the transcript of Virginia Graham from Mr. Shinn?

QUESTION NUMBER SIX

Did you receive a copy of the transcript of Virginia Graham from Mr. Kanarek?

QUESTION NUMBER SEVEN

Did you obtain a copy of the transcript from Mr. Kay?

QUESTION NUMBER EIGHT

Did you receive a copy of the transcript of Virginia Graham's testimony from Mr. Bugliosi?

QUESTION NUMBER NINE

Did you obtain a copy of the transcript of Virginia Graham's testimony from Mr. Musich?

QUESTION NUMBER TEN

Who were the parties that were the sources of the transcripts of the testimony of Virginia Graham that you received on October 7th and October 8th, 1970?

QUESTION NUMBER ELEVEN

Which attorney or attorneys of record was it that you told that you would not reveal the source if they gave you a copy of the transcript of Virginia Graham's testimony?

QUESTION NUMBER TWELVE

Did you receive any of the Virginia Graham statements from someone who was an associate of an attorney of record in the case?

QUESTION NUMBER THIRTEEN

Did you receive a copy of the Virginia Graham statement from anyone in the Office of the District Attorney of Los Angeles County other than the attorneys of record in this case, Mr. Bugliosi, Mr. Kay or Mr. Musich?

Now, therefore, you are required and commanded to forthwith attach the said William Farr and commit him to the Los Angeles County Jail and detain him there until he consents to appear in court and answer under oath each and every question set forth above or until he is discharged according to law.

The Court, on this 28th day of July, 1971, hereby signs and orders entered the foregoing FINDINGS AND ORDER ADJUDGING CONTEMPTS COMMITTED IN THE IMMEDIATE VIEW AND PRESENCE OF THE JUDGE; ORDER OF COMMITMENT.

CHARLES H. OLDER
Judge of the Superior Court

APPENDIX "E".

Order to Show Cause.

Superior Court of the State of California, for the County of Los Angeles.

The People of the State of California, Plaintiff, vs. Charles Manson, et al., Defendants. No. A253,156.

On reading the declarations of Robert K. Steinberg and Donald K. Byrne filed herein, and it appearing to the court that sufficient cause exists for inquiry into possible contempt charges for violation of the Order re Publicity, filed herein December 10, 1969, now, therefore, it is ordered that,

WILLIAM FARR appear before this court, in Department 104 thereof on Wednesday, May 19, 1971, at 9:00 a.m., to show cause why he should not be compelled to disclose which person or persons released to him the transcript of the statement of Virginia Graham on or about October 8, 1970.

For failure to comply with this order to show cause the said William Farr may be found in contempt of this court and punished therefor.

DATED: May 5, 1971.

CHARLES H. OLDER
Judge of the Superior Court

Declaration of Donald K. Byrne.

Superior Court of the State of California, for the County of Los Angeles.

The People of the State of California, Plaintiff, vs. Charles Manson, et al., Defendants. No. A253,156.

DONALD K. BYRNE declares as follows:

That declarant is an attorney at law admitted to practice in the courts of California. That in his capacity as Assistant County Counsel for the County of Los Angeles, declarant is one of the attorneys for the Superior Court of the State of California for the County of Los Angeles.

That the reporter's transcript of the record of the above entitled case, Volume 119, page 13270, a true copy of which is attached hereto and incorporated herein by reference, as Exhibit "A", discloses that a transcript of the statement of Virginia Graham was released to William Farr, then employed by the Los Angeles Herald Examiner, for publication, on or about October 8, 1970, by one of the attorneys in the above entitled case. That such release of such statement of Virginia Graham was in violation of the Order re Publicity filed herein on December 10, 1969, if such release was made by a person subject to such Order.

That the reporter's transcript of the record of the above entitled case, Volume 120, pp. 13358-13359, a true copy of which is attached hereto and incorporated herein by reference, as Exhibit "B", further discloses that William Farr, on October 8, 1970, refused to disclose the source from which he obtained the statement of Virginia Graham on the grounds provided by §1070 Evidence Code, in that he was then employed as a newspaper reporter.

That declarant is informed and believes that William Farr is not currently employed by a newspaper, press association or wire service as a reporter, publisher, editor nor in any other occupation listed in §1070 Evidence Code.

That in the best interests of the administration of justice it is necessary that the said William Farr be compelled to testify as to the source of his obtaining the statement of Virginia Graham, so that the above entitled court may enforce by contempt proceedings, if deemed appropriate, its Order re Publicity herein.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 5th day of May, 1971, at Los Angeles, California.

Donald K. Byrne

EXHIBIT "A"

. . . otherwise I wouldn't interrupt you.

THE COURT: What is the subject matter?

MR. STEINBERG: It is your gag order.

It came to my attention last night that one of the defense lawyers has released to Mr. William Farr of the Herald Examiner, and Mr. Farr told me to tell you this, he has released to him the entire statement of Miss Graham and Miss Howard that the People supplied to the defense lawyers yesterday, and that is now in the possession of the Herald Examiner, and I don't know who else.

THE COURT: Who was that?

MR. STEINBERG: Who was what?

THE COURT: Who was the one that released it?

MR. STEINBERG: He wouldn't tell me. He said he has the privilege.

But he told me so I can protect my client to tell you.

All he said was a defense lawyer. I don't know if he told Mr. Bugliosi today or not. He said he was going to.

MR. BUGLIOSI: I heard about it.

MR. STEINBERG: Miss Graham is working in my office temporarily and we are concerned about her now if the paper puts something in there about it.

THE COURT We are not going to take it up at this particular moment. Let's get on with this testimony.

. . .

EXHIBIT "B"

(The following proceedings were had in the chambers of the court out of the hearing of the jury:)

THE COURT: All counsel are present and Mr. Farr has returned.

Good afternoon, Mr. Farr.

"MR. FARR: Good afternoon. I've got an answer only on one of the questions. The question as to whether we were willing to waive the privilege.

The company feels that we cannot even, under the request made under the broader interests of justice, they feel we cannot waive 1070. They instruct me not to do so."

As to when or if we will use it, that decision has not been made. It is almost certain that it will be used.

The question is whether it will be at the end of Mrs. Graham's testimony or at the end of the trial or sooner. Those questions have not been decided upon.

I honestly don't know at this point. I would expect to know later in the day and would be glad to inform you if you so want me to, but I think it would be after the court adjourns.

THE COURT: Well, if they are bent on using it I don't suppose it really makes any difference whether I know about it beforehand or not.

MR. FARR: Should that answer be in the negative, you might just want to know it is in the negative, and I will relay that.

THE COURT: It might help me to get a good night's sleep.

Well, thanks very much, I appreciate your coming back and telling us these things.

MR. FARR: I appreciate the courtesy with which it was done. In some ways I wish that my answers could be different, but in good faith they cannot be.

THE COURT: I understand the problem.

MR. KANAREK: Would it be in order to ask Mr. Farr as to who these people were so your Honor could speak with them, I mean—

MR. FITZGERALD: The city editor for one.

MR. KANAREK: I make a motion that your Honor speak to the people in authority at the Herald-Examiner.

THE COURT: They have been advised by Mr. Farr what my feelings are.

Did you get a copy of the transcript?

MR. FARR: Yes, and I delivered it.

THE COURT: To them? Have they seen it?

MR. FARR: Yes.

THE COURT: So they know what the situation is, Mr. Kanarek, and I think it would be presumptuous of me to go beyond that. There is nothing I can add to it.

They see it one way and we see it another. . . .

Declaration of Robert K. Steinberg.

Superior Court of the State of California, for the County of Los Angeles.

The People of the State of California, Plaintiff, vs. Charles Manson, et al., Defendants. No. A253156.

I, ROBERT K. STEINBERG, declare as follows:

That declarant is and was at all times herein mentioned an attorney at law admitted to practice in the courts of California.

That on or about October 8, 1970, while appearing as attorney for Virginia Graham, a witness in the above entitled case, in Department 104 of the Los Angeles County Superior Court, William Farr, then a reporter for the Los Angeles Herald Examiner, stated to declarant that one of the lawyers in the above entitled case had given him a copy of the statement of Virginia Graham relating to this case.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Los Angeles, California, this 3 day of May, 1971.

Robert K. Steinberg

APPENDIX "F".

Opinion of the Court of Appeal.

In the Court of Appeal of the State of California, Second Appellate District, Division One.

William T. Farr, Petitioner, v. The Superior Court of the State of California, County of Los Angeles, Respondent. 2d Civ. No. 38961.

Filed: Dec. 17, 1971.

PROCEEDING to review an order of the Superior Court of Los Angeles County. Order affirmed.

Cooper and Nelson and Grant B. Cooper for Petitioner.

John D. Maharg, County Counsel, and William F. Stewart, Deputy County Counsel, for Respondent.

Robert C. Lobdell, Gibson, Dunn & Crutcher, and Robert S. Warren, for Amicus Curiae The Times Mirror Company.

Dean Lesher for Amicus Curiae California Newspaper Publishers Association.

George R. Johnson for Amicus Curiae Twin Coast Newspapers, Inc.

Flint & Mac Kay, Edward L. Compton and Edwin Freston for Amicus Curiae Hearst Corporation.

Jack B. Purcell, William Whitsett, McCutchen, Black, Verleger & Shea, and Howard J. Privett for Amicus Curiae Columbia Broadcasting System, Inc.

Bodle, Fogel, Julber & Reinhardt, George E. Bodle, Daniel Fogel and Stephen Reinhardt for Amicus Curiae Newspaper Guild, AFL-CIO, CLC.

Earl Klein for Amicus Curiae Sigma Delta Chi.

This is a petition for writ of review of an order of respondent court adjudging petitioner Farr to be in con-

tempt for failing to answer questions put to him. We conclude that the trial court properly found petitioner to be in contempt of court.

The matter at bench is an outgrowth of the trial of Charles Manson and his codefendants for two sets of multiple murders. The crimes themselves and the ensuing trial were the subjects of much sensational notoriety. Early in the proceedings the superior court entered an Order re Publicity. That order prohibited any attorney, court employee, attache, or witness from releasing for public dissemination the content or nature of any testimony that might be given at trial or any evidence the admissibility of which might have to be determined by the court. The order became effective December 10, 1969, and remained in effect throughout the trial.

On October 5, 1970, during the course of the trial, Stephen R. Kay, one of the deputy district attorneys assigned to the prosecution of the Manson case, obtained a written statement from Mrs. Virginia Graham, a potential witness. The statement recites that Susan Atkins, a codefendant in the murder prosecution, had confessed the crimes to Mrs. Graham in lurid detail and implicated Manson. It states that the defendants planned after the murders to cross the country by bus and in the course of their travels to murder people at random. Miss Atkins purportedly told Mrs. Graham that she and her codefendants had planned to murder a series of show business personalities each in a particularly vicious and bizarre manner. Included in the list of intended victims were Elizabeth Taylor whose eyes were to be removed and mailed to an ex-husband, Richard Burton who was to be castrated, Frank Sinatra who was to be skinned alive while hang-

ing from a meat hook, and Tom Jones whose throat was to be cut while he was engaged in an act of sexual intercourse with Miss Atkins at knife point if necessary. Steve McQueen was also mentioned as a potential victim.

Copies of the Virginia Graham statement were prepared by the prosecution and at the court's instruction were delivered one to each attorney then appearing for the defense and one to the trial court. No other copies of the statement were released. The statement was edited to exclude inadmissible matter in preparation for Mrs. Graham's testimony. In October 1970, petitioner Farr was a reporter for the Los Angeles Herald Examiner, a daily newspaper. He learned of the Graham statement. Although aware of the content of the December 10, 1969, Order re Publicity he contacted three persons subject to the court order seeking a copy of the statement. Farr told his potential sources of the statement that he would keep confidential the identity of the source. He received two copies of the statement on October 7, each from an attorney of record in the murder trial and one copy on the morning of October 8 from a person subject to the Order re Publicity who may or may not have been an attorney of record.

On October 8, 1970, Robert Steinberg, an attorney representing Mrs. Graham, told the trial court that it had come to his attention "that one of the defense lawyers" had released the Graham statement to Farr. At an in-chambers hearing, Judge Older, presiding over the Manson trial, asked Farr if the Herald Examiner intended to print a story based upon the statement. He also sought the identity of the persons who had given a copy to Farr. While informing the court that he

had copies of the Graham statement, Farr refused to disclose the sources of it, asserting the immunity from contempt granted to newspapermen by Evidence Code section 1070. On October 9, Farr's story bearing his by-line and headlined "Liz, Sinatra on Slay List—Tate Witness" appeared in the Herald Examiner. The story repeated the sensational, gory details of planned murders contained in the Graham statement as well as material in the statements implicating Manson in the murders already committed. Mrs. Graham testified in the Manson trial on October 10. Much of the matter contained in the statement given by her to Kay and printed in the Herald Examiner story was not permitted in evidence.

Manson, Miss Atkins, and their codefendants were found guilty of the counts of murder charged against them and were sentenced to death. An automatic appeal to the Supreme Court is now pending. After judgment in the Manson case the trial court, on May 19, 1971, convened a hearing to determine the source of the Herald Examiner story recounting the Graham statement. At the outset, the trial court announced that the purpose of its hearing was to determine whether there had been a violation of its Order re Publicity which had jeopardized a fair trial for the defendants in the Manson case.

By May 19, Farr had terminated his position with the Herald Examiner and accepted employment as press secretary to the Lis Angeles District Attorney, the prosecutor in the Manson trial. Farr was called as the first witness at the hearing. He stated that with knowledge of the order prohibiting the disclosure he had obtained copies of the Graham statement from two of the attorneys of record in the Manson trial and identified

the members of the group to which those two belonged as Mr. Bugliosi, Mr. Musich, and Mr. Kay, all deputy district attorneys, and Mr. Kanarek, Mr. Shinn, and Mr. Fitzgerald, counsel for various of the defendants.[1] Having received that information, the trial court recessed the hearing to permit interrogation of the attorneys designated by Farr.

Messrs. Bugliosi, Musich, Kay, Kanarek, Shinn, and Fitzgerald were subpoenaed. Each testified under oath in effect denying that he had directly or indirectly furnished the Graham statement to Farr. Members of the prosecutorial team strongly intimated that the statements must have come from one or more of defense counsel. The attorneys for the defense intimated with equal strength that the source was the prosecution. The trial court again recessed the hearing to permit further questioning of Farr.

The hearing resumed, and a series of questions was asked of Farr. He acknowledged that he had obtained three copies of the Graham statement, two from attorneys of record, members of the previously identified group of six, and one from a person subject to the court order but whom Farr refused to disclose as either included or excluded from the group of six. He refused to answer a series of questions asking the identity of the persons who had furnished the Graham statement to him including specific interrogation naming each lawyer in the group of six previously disclosed. Farr similarly refused to answer questions seeking to ascertain the places where he had obtained the copies of the statements, the attorneys of record approached by

[1]Ronald Hughes, counsel for one of the defendants in the Manson trial died during the trial. Farr acknowledged that Mr. Hughes was not a source of the Graham statement.

him to obtain the statement and to whom he had given a promise of confidentiality of source, a question asking whether a source of the statement was an associate of an attorney of record, and a question asking whether a copy of the statement had been obtained from the office of the district attorney. Farr justified his refusal to answer by reference to Evidence Code section 1070. In each instance of a refusal to answer the court ordered an answer on penalty of contempt. After a further refusal the court held Farr to be in direct contempt. It ordered him incarcerated in the county jail until he answered the questions but stayed its order to permit Farr to pursue this writ of review.

In this proceeding, petitioner Farr contends: (1) the judgments of guilt entered in the Manson trial and the automatic appeal of those judgments to the Supreme Court deprived the trial court of jurisdiction over the trial so as to render it powerless after judgment to conduct a hearing into the circumstances of the purported breach of the Order re Publicity; (2) petitioner Farr is granted immunity from punishment for contempt by Evidence Code section 1070 because he was a "newspaperman" when he solicited and received the Graham statements although he was no longer a "newspaperman" at the time of the hearing; and (3) the sources of the Graham statements are protected from disclosure by a First Amendment privilege. Amici curiae who have filed briefs in support of petitioner's position contend, in addition, that the Order re Publicity is void because it constitutes an unconstitutional restriction upon freedom of the press. We conclude that the judgment of contempt is valid.

Jurisdiction of Trial Court

Petitioner contends that the trial court was without jurisdiction to proceed with its inquiry into possible violations of its Order re Publicity. He argues that the trial of the Manson matter had ended before the inquiry commenced and concludes that by reason of the end of the principal action the court, if it desired to institute punishment for contempt of an order made in the course of the trial, was limited to referring the matter to the city attorney for appropriate action.

A contention identical with that made by petitioner here has been made to the Court of Appeal in an earlier case and rejected by it. There a dissatisfied litigant had accused the court reporter of tampering with the record and one of the counsel in the case with unethical solicitation of litigation. The trial out of which the complaint arose had been terminated by a voluntary dismissal. The trial court nevertheless conducted a hearing to determine the validity of the charges. Two witnesses called at the hearing refused to testify and were held in contempt. On review of the contempt adjudication the witnesses contended that jurisdiction of the trial court over the principal action having terminated, it no longer could proceed with the hearing on the allegations of misconduct by the reporter and counsel. They argued that the sole remedy lay in a criminal contempt prosecution instituted by the district attorney. The Court of Appeal rejected the contention holding that the trial court had power to proceed and that the witnesses were in contempt of the court for refusing to answer questions put to them in the course of the hearing. It said: "It may be conceded that if an unverified complaint were presented against a person who had no connection with the court or with any adjourned or pending proceeding before it the judge might be war-

ranted in declining to file and consider it. Ordinarily, complaints charging crime are filed in the justice or municipal court. . . . However, the same does not hold true as to a court reporter, who is an adjunct of the court. . . . Neither does it apply to counsel who have conducted a trial or other hearing before the superior court. And the court's power does not end with the right to control 'its ministerial officers and all other persons in any manner connected with a judicial proceeding,' but also in furtherance of justice it may 'compel the attendance of persons to testify in an action or proceeding pending therein.'" (*Whitlow v. Superior Court,* 87 Cal.App.2d 175, 182 [196 P.2d 590]; hear. den.) Our Supreme Court has recently cited *Whitlow* with approval in a decision upholding the proposition that a trial court retains the power to punish for contempt occurring in an action although the principal action itself has terminated. (*Morelli v. Superior Court,* 1 Cal.3d 328, 332 [82 Cal.Rptr. 375, 461 P.2d 655].)

In the case at bench the trial court was faced with information that two of the six trial counsel who had conducted a case before it was guilty of serious misconduct. It was both empowered and duty bound to inquire into the validity of the information. Significantly, in the early stages of its inquiry it became apparent that the prosecution in the principal case was asserting the position that the Graham statements had been given to Farr by defense counsel while the attorneys for the defense implied equally that the statements had emanated from the prosecution. Judge Older could not, if he recognized his duty as a judicial officer, blind himself to the likely possibility that the question of prejudicial publicity would be an issue on appeal of the principal case. Rather, he was required to do as he

did—risk the disapproval of the powerful press and mass electronic communication media to ascertain at an early date facts which could assist the resolution of that issue on appeal and determine the complicity of the officers of his court in violations of an order which would have prevented the issue from arising. If the members of the prosecution team leaked the Graham statements to Farr the issue of the prejudicial nature of those statements may merit serious consideration on appeal. (*Sheppard v. Maxwell*, 384 U.S. 333, 360-361 [16 L.Ed.2d 600, 86 S.Ct. 1507]; *People v. Brommel*, 56 Cal.2d 629 [15 Cal.Rptr. 909, 364 P.2d 845].) If the leak emanated from counsel for the defense the situation is materially different. The necessity for inquiry into Farr's sources of the statement is particularly acute in the matter at bench. There is the inescapable need to dispel or confirm the inferences flowing from the tender by the prosecution of an important position to Farr shortly after the leak and publication of the sensational and inflammatory story containing the Graham statement.

We thus conclude that the inquiry conducted by the trial court was necessary to its duty to control its own officers, counsel appearing before it. We conclude, also, that in the peculiar facts of the matter at bench the inquiry was necessary to discharge the duty of the trial court to perfect a record pertaining to an issue likely to arise on appeal and an equally important duty to protect the integrity of the very process of prosecution and defense of the principal case, the Manson trial. The necessity of the inquiry impels the ultimate conclusion that the trial court was empowered to require the attendance of witnesses and compel their testimony pertinent to the objects of the hearing.

Evidence Code Section 1070

Petitioner contends that the adjudication of contempt must be annulled because of the immunity from contempt provided in Evidence Code section 1070. That section states: "A publisher, editor, reporter, or other person connected with or employed upon a newspaper, or by a press association or wire service, cannot be adjudged in contempt by a court, the Legislature, or any administrative body, for refusing to disclose the source of any information procured for publication and published in a newspaper. Nor can a radio or television news reporter or other person connected with or employed by a radio or television station be so adjudged in contempt for refusing to disclose the course of any information procured for and used for news or news commentary purposes on radio or television."

Section 1070 read strictly does not include petitioner within the scope of its immunity. At the time of the hearing at which he refused to answer questions he was not a person described in the section. Petitioner argues that section 1070 must be construed broadly to include within its immunity a person who occupied a described status at the time he acquired the information whose source is sought although he no longer occupies the status when disclosure is required. He contends that otherwise the underlying purpose of the statute, the encouragement of free flow of information to the public, will be impaired by the reluctance of persons to communicate with reporters because of the possibility of the revelation of their identity if the reporter's status changes. Respondent counters with the argument that Evidence Code section 1070 is considerably less than an all embracing effort to aid the flow of information by protecting sources. Thus, respondent notes that the

section, while immunizing persons connected with newspapers, radio, and television from contempt for failure to reveal a source does not protect persons connected with magazines, free lance authors, lecturers, or pamphleteers. (*In re Cepeda*, 233 F.Supp. 465, 473; cf. Comment, 6 Harv. Civil Rights—Civil Liberties L.Rev. 119, 130.)

On the narrow facts of the case at bench we do not reach the issue of construction of Evidence Code section 1070 as protecting former members of the newspaper, radio, and television profession from liability to the sanction of contempt. To construe the statute as granting immunity to petitioner, Farr, in the face of the facts here present would be to countenance an unconstitutional interference by the legislative branch with an inherent and vital power of the court to control its own proceedings and officers.

The power of contempt possessed by the courts is inherent in their constitutional status. While the Legislature can impose reasonable restrictions upon the exercise of that power or the procedures by which it may be exercised (*In re McKinney*, 70 Cal.2d 8 [73 Cal. Rptr. 580, 447 P. 2d 972]), it "cannot declare that certain acts shall not constitute a . . . contempt." (In *re San Francisco Chronicle*, 1 Cal.2d 630, 635 [36 P.2d 369].) Thus, former subdivision 13 of Code of Civil Procedure section 1209 which provided: "[N]o speech or publication reflecting upon or concerning any court or officer thereof shall be treated or punished as a contempt of court unless made in the immediate presence of such court while in session and in such a manner as to actually interfere with its proceedings" was held unconstitutional by our Supreme Court as an

invalid legislative effort to abridge the inherent power of the court. (*In re San Francisco Chronicle, supra.*)

If Evidence Code section 1070 were to be applied to the matter at bench to immunize petitioner from liability, that application would violate the principle of separation of powers established by our Supreme Court. That application would severely impair the trial court's discharge of a constitutionally compelled duty to control its own officers. The trial court was enjoined by controlling precedent of the United States Supreme Court to take reasonable action to protect the defendants in the Manson case from the effects of prejudicial publicity. (*Sheppard v. Maxwell,* 384 U.S. 333 [16 L.Ed. 2d 600, 86 S.Ct. 1507].) It performed its duty by issuing the Order re Publicity. By petitioner's own statement that order was violated by two attorneys of record, of a list of six counsel in the case. Those attorneys were officers of respondent court. By petitioner's own statement the violations occurred because of his solicitation. Respondent court was both bound and empowered to explore the violations of its order by its own officers. (*Wood v. Georgia,* 370 U.S. 375, 383 [8 L.Ed.2d 569, 82 S.Ct. 1364];[2] see also, Wright, "Fair Trial and Free Press," 57 Judicature 377, 381; and Mosk, "Free Press and Fair Trial—Placing Responsibility," 5 Santa Clara Lawyer 107, 119;[3] Cooper, "The Rationale for the ABA Recommendations," 42 Notre Dame Lawyer 857.)

---

[2]"[C]ourts necessarily must possess the means of punishing for contempt when conduct tends directly to prevent the discharge of their functions" including "the authority and power . . . to assure litigants a fair trial."

[3]"[C]ourts must be prepared to deal firmly with lawyers who choose to conduct their litigation in the forum of newspaper columns or television, instead of in the courtroom."

Without the ability to compel petitioner to reveal which of the six attorney officers of the court leaked the Graham statement to him, the court is without power to discipline the two attorneys who did so, both for their violations of the court order and for their misstatement to the court that they were not the source of the leak. Equally significant is the proposition that petitioner tarred six counsel with the same brush. Unless the court compels him to reveal which two of the six violated their professional obligation, four reputations of officers of the court will remain unjustly impaired.

We thus conclude that Evidence Code section 1070 cannot be applied to shield petitioner from contempt for failure to reveal the names of the two attorneys of record in the Manson trial who furnished him with copies of the Graham statement. A closer question exists with respect to petitioner's refusal to divulge the identity of the third person, possibly not an attorney of record but subject to the Order re Publicity who gave him a copy of the statement. Here the court's power to compel an answer in the face of Evidence Code section 1070 must rest primarily upon the necessity of disclosure as a means of enforcement of its obligation to prevent prejudicial publicity emanating from its attaches or the office of the prosecuting attorney. We conclude here, also, that section 1070 if applied to immunize petitioner from contempt would unconstitutionally interfere with the power and duty of the court. The record is clear that the only persons other than attorneys of record who had access to the Graham statement and who were subject to the Order re Publicity were attaches of the court and members of the district attorney's office. The mandate of the Uni'ed States Su-

preme Court that the trial court control prejudicial publicity emanating from such sources (*Sheppard v. Maxwell, supra,* 384 U.S. 333) can be discharged only if that court can compel disclosure of the origins of such publicity.[4]

Freedom of the Press

Petitioner argues that the freedom of the press guaranteed by the First Amendment to the United States Constitution precludes inquiry into a reporter's sources of news. While existing decisional law does not support that position (see note, "Reporters and Their Sources: The Constitutional Right to a Confidential Relationship," 80 Yale Law Journal 317, 318, fn. 5, 6; comment, 6 Harv. Civil Rights—Civil Liberties L.Rev. 119, 120, fn. 9, 10), the recent grant of certiorari by the United States Supreme Court in three cases indicates a substantial possibility of change in the concept of the scope of protection afforded by the First Amendment to news sources. (*Caldwell v. United States,* 434 F.2d 1081, cert. granted, sub. nom. *United States v. Caldwell,* 402 U.S. 942; *In re Pappas* (Mass. 1971) 266 N.E.2d 297, cert. granted sub. nom. *Pappas v. Smith,* 402 U.S. 942; *Branzburg v. Pound* (Ky. Ct.App. 1971) 461 S.W.2d 345, cert. granted sub. nom. *Branzburg v. Hayes,* 402 U.S. 942.)

---

[4]We express no opinion in the quantum of proof required to establish that inquiry into a newsman's source is necessary to permit the court to carry out its duty to control its own officers and to restrict persons subject to its control from disseminating the prejudicial pretrial publicity. Here petitioner has admitted the necessary facts. Neither do we express an opinion on the validity of Evidence Code section 1070 where a possible source of the newsman's story contrary to a Sheppard order is other than an attorney of record, a court attache, or the prosecutor's office.

The context of the case at bench precludes the necessity of awaiting the outcome of the three cases now before the United States Supreme Court. All involve inquiries into reporter's sources of information relevant to prosecution of criminal activity but none involves questions seeking the source of the violation of a trial court order designed to prevent prejudicial publicity as does the matter here. Existing United States Supreme Court precedent indicates that regardless of the outcome of the three cases now before that tribunal, no rule of confidentiality of source will protect the petitioner in the case at bench.

Freedom of the press as guaranteed by the First Amendment is not absolute but is limited by narrow compelling exceptions. (See *Zemel v. Rusk*, 381 U.S. 1, 16-17 [14 L.Ed.2d 179, 85 S.Ct. 1271; *Brandenburg v. Ohio*, 395 U.S. 444, 447 [23 L.Ed.2d 430, 89 S.Ct. 1827; *Bates v. Little Rock*, 361 U.S. 516, 524 [4 L.Ed.2d 480, 80 S.Ct. 412].) That freedom exists to insure the unimpeded flow of information indispensible to the existence of a democratic society. (*Mills v. Alabama*, 384 U.S. 214, 218-219 [16 L.Ed.2d 484, 86 S.Ct. 1434; note, "Reporters and Their Sources: The Constitutional Right to a Confidential Relationship," 80 Yale Law Journal 317, 324-325.) Where, as here, the impediment to the free flow of information is indirect by the creation of a situation in which press informants may be inhibited by the possibility that their identity will be revealed, the need for disclosure of source must be weighed to determine whether it is so compelling as to outbalance the vital interest it uninhibited flow of news. (Note, "Reporters and Their Sources: The Constitutional Right to a Confidential Relationship," 80 Yale Law Journal 317, 319-320;

note and comment, "Privileged Communications—News Media," 46 Oregon L.Rev. 99, 101; comment, "Silence Orders—Preserving Political Expression by Defendants and Their Lawyers," 6 Harv. Civil Rights—Civil Liberties L.Rev. 595, 597-598; comment, "Constitutional Protection For the Newsman's Work Product," 6 Harv. Civil Rights—Civil Liberties L.Rev. 119, 135.)

In the matter at bench there is an undeniable need for disclosure of source if the court is not to be thwarted in its effort to enforce its order against prejudicial publicity issued to comply with the mandate of the United States Supreme Court in *Sheppard v. Maxwell, supra,* 384 U.S. 333. That same mandate declares that the public interest in fair trial is so compelling as to both validate and require that in appropriate situations the public temporarily be denied access to prejudicial publicity emanating from court controllable sources. Since the highest court in the United States has ruled that prejudicial material from those sources may properly be kept from news media no public purpose is frustrated by compelling a newsman to reveal his source of a violation of an order such as that considered here. If disclosure of the source of a violation may inhibit future violations, the inhibition serves the public purpose declared by the High Court and deprives the public of only that information which that court has declared must be kept from it temporarily if the constitutional right to a fair trial is to be preserved.

Balancing, as we are required to do, the interest to be served by disclosure of source against its potential inhibition upon the free flow of information, we conclude that petitioner is not privileged by the First Amendment to refuse to answer the questions put to him in the trial court.

Validity of Order re Publicity

Amici curiae contend that the Order re Publicity issued by the trial court is a void interference with freedom of the press. They argue that the jury was sequestered in the Manson trial and no purpose could be served by an order limiting publicity after the jury was sequestered. The issue was not raised by petitioner in the trial court and is not raised by him in his petition for review. We thus do not have before us a record adequate to deal with the contention raised by amici. We cannot determine from the information available to us what effect the release of prejudicial publicity during the course of the Manson trial might have had. We thus must reject the contention.

Disposition

The order imposing judgment of contempt is affirmed.

Thompson, *J.*

We concur:

Wood, *P. J.*

Lillie, *J.*

Order Modifying Opinion and Denying Petition for Rehearing.

In the Court of Appeal of the State of California, Second Appellate District, Division One.

William T. Farr, Petitioner, v. The Superior Court of the State of California, County of Los Angeles, Respondent. Civil No. 38961.

Filed: Jan. 12, 1972.

THE COURT:

The typewritten opinion filed herein on December 17, 1971, is amended as follows:

(1) There is eliminated the sentence beginning on the last line of page 10 which states: "There is the inescapable need to dispel or confirm the inferences flowing from the tender by the prosecution of an important position to Farr shortly after the leak and publication of the sensational and inflammatory story containing the Graham statement."

(2) There is substituted for that sentence: "At the time he was required by respondent court to reveal his source, Farr had become press secretary of the prosecution."

(3) There is added at the end of the 16th line of page 11 the following footnote 2: "2 There is an implication in the briefs of amici that Judge Older should have referred the proceeding here involved to another judge rather than conducting it himself. No objection on that ground was tendered in the trial court."

(4) Footnotes 2 and 3 on page 14 of the typewritten opinion and footnote 4 on page 16 are renumbered 3, 4 and 5, respectively.

The petition for rehearing is denied.

CERTIFIED FOR PUBLICATION.

APPENDIX "G".

Order Modifying Opinion and Denying Petition for Rehearing.

In the Court of Appeal of the State of California, Second Appellate District, Division One.

William T. Farr, Petitioner, v. The Superior Court of the State of California, County of Los Angeles, Respondent. Civil No. 38961.

Filed: January 12, 1972.

THE COURT:

The typewritten opinion filed herein on December 17, 1971, is amended as follows:

(1) There is eliminated the sentence beginning on the last line of page 10 which states: "There is the inescapable need to dispel or confirm the inferences flowing from the tender by the prosecution of an important position to Farr shortly after the leak and publication of the sensational and inflammatory story containing the Graham statement."

(2) There is substituted for that sentence: "At the time he was required by respondent court to reveal his source, Farr had become press secretary of the prosecution."

(3) There is added at the end of the 16th line of page 11 the following footnote 2: "2 There is an implication in the briefs of amici that Judge Older should have referred the proceeding here involved to another judge rather than conducting it himself. No objection on that ground was tendered in the trial court."

(4) Footnotes 2 and 3 on page 14 of the typewritten opinion and footnote 4 on page 16 are renumbered 3, 4, and 5, respectively.

The petition for rehearing is denied.

CERTIFIED FOR PUBLICATION.

APPENDIX "H".

CLERK'S OFFICE SUPREME COURT

4250 State Building
San Francisco, California 94102

March 20, 1972

Dear Sir: *I have this day filed Order* HEARING DENIED.

In re: 2 Civ. *No.* 38961 Farr *vs.* Superior Court, Los Angeles.

Respectfully,

G. E. Bishel
Clerk

APPENDIX "I".

"Newsman's refusal to disclose news source. A publisher, editor, reporter, or other person connected with or employed upon a newspaper, or by a press association or wire service, cannot be adjudged in contempt by a court, the Legislature, or any administrative body, for refusing to disclose the source of any information procured for publication and published in a newspaper.

Nor can a radio or television news reporter or other person connected with or employed by a radio or television station be so adjudged in contempt for refusing to disclose the source of any information procured for and used for news or news commentary purposes on radio or television."

California Evidence Code, Section 1070.

SUBJECT INDEX

	Page
Statement of the Case	2
Reasons for Granting the Petition	6
Conclusion	8

TABLE OF AUTHORITIES CITED

Cases	Page
Branzburg v. Hayes, 406 U.S.	6
Bridges v. California, 314 U.S. 252	6
Chase v. Robson (7th Cir. 1970), 435 F.2d 1059	6
Craig v. Harney, 331 U.S. 367	6
Farr v. Superior Court (1971), 22 Cal.App.3d 60, 99 Cal.Rptr. 342	4
Johnson v. Mississippi, 403 U.S. 212	8
Mayberry v. Pennsylvania, 400 U.S. 455	8
New York Times Co. v. United States, 403 U.S. 713	6
Organization for a Better Austin v. Keefe, 402 U.S. 415	6
Pennekamp v. Florida, 328 U.S. 331	6
Speiser v. Randall, 357 U.S. 513	7
WHYY, Inc. v. Glassboro, 393 U.S. 117	7
Statutes	
California Evidence Code, Sec. 1070	3, 4, 7
United States Constitution, First Amendment	3, 6, 8, 9
United States Constitution, Fourteenth Amendment	9
Textbooks	
American Bar Association Advisory Committee on Fair Trial and Free Press, Standards Relating to Fair Trial and Free Press (Tentative Draft, Dec. 1966), p. 68	2

Page

Free Press-Fair Trial: The "Gag Order," A California Aberration, 45 Southern California Law Review (1972), p. 51 6

Reardon, The Fair Trial-Free Press Controversy, 4 San Diego Law Review (1967), pp. 255, 263 3

IN THE

Supreme Court of the United States

October Term, 1971
No. 71-1642

WILLIAM T. FARR,

Petitioner,

vs.

SUPERIOR COURT OF LOS ANGELES COUNTY,

Respondent.

BRIEF OF AMICI CURIAE IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

(Sigma Delta Chi, The Times Mirror Company, California Newspaper Publishers Association, Twin Coast Newspapers, Inc., The Hearst Corporation and The Newspaper Guild, AFL-CIO, CLC.)

Amici (appearing by written consent of the parties)[1] represent a broad spectrum of the press, including metropolitan newspapers, small newspapers, and working journalists. They are here united in the belief that grave injury has been done to freedom of speech and press by the proceedings below and most especially by the decision of the California Court of Appeal.

They are moved urgently to support the petition for a writ of certiorari filed on behalf of reporter William

[1]A letter from William F. Stewart, Deputy County Counsel, County Counsel of Los Angeles County (attorneys for respondent Superior Court), and a letter from Mark Hurwitz (attorney for petitioner Farr), authorizing the filing of this amici brief are filed concurrently with the Clerk.

T. Farr in order to protect Mr. Farr from unjust imprisonment, but more importantly in the broader sense, also to preserve the right of the press in California to report free from unwarranted judicial harassment.

Statement of the Case.

1. On December 10, 1969, the Superior Court for Los Angeles County, California, entered an Order Re Publicity in the case of *People v. Manson* (Appendix C), and the effect of that order was to prohibit parties, witnesses, attorneys, judicial attachés or employees, public officials, grand jurors, the chief of police and any sheriff from "releas[ing] or authoriz[ing] the release for public dissemination" of all but minimal information respecting the pending proceedings.

2. This Order Re Publicity paralleled in form court rules proposed by the well-known Reardon Committee.[2] In its report proposing such rules, the Reardon Committee assured the press that, "A vital factor in the Committee's consideration has been its desire not to recommend any steps that would impair the benefits derived from criminal news coverage or abridge the constitutional freedoms of speech and of the press."[3] For that reason, and because the decisions of this Court cast considerable doubt upon the propriety of any such restraints, the Committee did not recommend direct restrictions upon the news media.

3. The President of the American Bar Association, in a speech in New York on January 27, 1967, further emphasized that the rules proposed by the Reardon

---

[2]ABA Advisory Committee on Fair Trial and Free Press.

[3]ABA Advisory Committee on Fair Trial and Free Press, Standards Relating to Fair Trial and Free Press (Tentative Draft, Dec. 1966), 68.

Committee "would NOT restrict the press or other news media from disseminating publicly any information the media could develop through their own initiative or resources about crimes committed or about the administration of justice."[4] Justice Reardon quoted this statement with approval in an explanatory article written for the San Diego Law Review.[5]

4. But unfortunately, when any branch of government issues decrees compelling silence, the enforcement of those decrees inevitably leads to ever more draconian measures wholly at odds with the First Amendment.

5. And so here, Judge Older, trial judge in the *Manson* case, became displeased by an article in the Herald-Examiner which set forth information indicating to Judge Older that someone had violated the Order Re Publicity.

6. He thereupon self-initiated an investigation to discover the identity of the speaker who wasn't supposed to speak. The mode of investigation he utilized was to bring in the reporter who authored the story and attempt to extract from him the source of his information. (Appendix A.)

7. The first interrogation resulted in failure because the reporter asserted his protection from contempt under California Evidence Code Section 1070. (Appendix I.) That section provides, in substance, that a reporter may not be held in contempt for refusal to disclose the confidential sources of information procured for publication.

---

[4]President Marden, quoted in Reardon, The Fair Trial-Free Press Controversy, 4 San Diego L.Rev. 255, 263 (1967).

[5]Reardon, The Fair Trial-Free Press Controversy, 4 San Diego L.Rev. 255, 263 (1967).

8. But Judge Older discovered, months later, that the reporter had left his former employer and was no longer engaged in reporting the news. Consequently, Judge Older reinitiated the inquiry and again had the reporter Farr brought before him. (Order to Show Cause, Appendix E.)

9. Mr. Farr upheld his responsibilities as an ethical reporter and refused to identify the sources of his article. He was adjudicated to be in contempt of court and ordered to be jailed until he responds to the questions posed and identifies the sources of the information published. [Rep. Tr., Appendix B, pp. 19-53 and 111-149; Findings and Order, Appendix D.]

10. The California Court of Appeal upheld his conviction in an opinion (Appendices F and G)[6] which asserted that California Evidence Code Section 1070 (and presumably all other Evidence Code witness privileges) are inapplicable to contempt proceedings, or at least contempt proceedings initiated by a court pertaining to assumed violation of a "gag order". Thereby, the following proposition was established as the law of California:

> A. A reporter obtaining information confidentially respecting a possible violation of a statute (as well as other matters) is protected from forced disclosure of his confidential sources.
>
> B. A reporter obtaining information confidentially respecting a possible violation of a judicial decree is not protected from forced disclosure of his confidential sources.

---

[6]*Farr v. Superior Court* (1971), 22 Cal.App.3d 60, 99 Cal. Rptr. 342.

11. The California Supreme Court denied a hearing (Appendix H) and the decision of the Court of Appeal became final.

In the opinion of amici, these events demonstrate a peculiar insensitivity to freedom of speech and press by an agency of government most alert to this constitutional right when adjudicating the propriety of speech-restrictive activities by the Legislature and Executive. The capstone of these events is, of course, the holding of the California Court of Appeal that the court's activity in promulgating and enforcing its restrictive order is within its exclusive prerogatives, untrammeled by any principle of law not court promulgated.

We submit the following arguments in support of petitioner Farr and respectfully pray that this Court accept this matter for hearing, enforce the rights of Farr and of the public and reverse the contempt conviction.

REASONS FOR GRANTING THE PETITION.

Amici recognize that this Court in *Branzburg v. Hayes,* 406 U.S. ....., denied the existence of a constitutional newsman's "privilege" under the facts of that case to be free from grand jury interrogation respecting the sources of news stories. However, in that same opinion, it was recognized that news gathering is an indispensable function of press operations fully qualifying for First Amendment protection. (Slip opinion pp. 15-16, 41-42.) And, Mr. Justice Powell's concurring opinion stressed that "no harassment of newsmen will be tolerated"; "the courts will be available to newsmen under circumstances where legitimate First Amendment interests require protection."

Amici submit that the case of reporter Farr does constitute "harassment" necessitating the protection of this Court. A number of judicial speech-suppressive activities have been combined with synergistic effect to attack press freedom.

First, it must be recalled that the judicial decree (Appendix C) which provided the predicate for the investigation resulting in the contempt adjudication was itself a constitutionally dubious "gag order" proscribing speech respecting the administration of criminal justice. (See *Bridges v. California,* 314 U.S. 252; *Pennekamp v. Florida,* 328 U.S. 331; *Craig v. Harney,* 331 U.S. 367, in the light of *New York Times Co. v. United States,* 403 U.S. 713, and *Organization for a Better Austin v. Keefe,* 402 U.S. 415; see also, *Chase v. Robson* (7th Cir. 1970), 435 F.2d 1059; Free Press-Fair Trial: The "Gag Order," A California Aberration, 45 So.Calif.L. Rev. 51 (1972).) It was a court instigated effort to discover the identity of the speaker "violating" this

decree which led to the Farr interrogation and subsequent contempt adjudication.

Second, the decision of the California Court of Appeal even denies to a reporter faced with interrogation respecting an alleged violation of one of these speech-restrictive decrees the protection of the privilege granted by the California Legislature in Evidence Code Section 1070. No rational reason supports the unequal application of this law depending upon whether violation of a decree or a statute is the subject of the investigation. Assuming, *arguendo*, that the State of California is free to withhold any statutory privilege protecting the constitutionality of news sources, it is not free to grant such a privilege, but withhold it without justification from persons within a single and unitary class—namely, reporters who have obtained information for publication from confidential sources. (See *WHYY, Inc. v. Glassboro*, 393 U.S. 117, applying this principle to tax exemptions.) This limitation upon a State's discretion in granting or withholding a "privilege" is of even greater significance where the grant or withholding of the privilege affects rights of free speech and press. (*Speiser v. Randall*, 357 U.S. 513, respecting the imposition of a loyalty oath requirement upon the obtaining of a property tax exemption.)

Finally, the pursuit of Farr was accompanied by denial of even the appearance of fairness to Mr. Farr in arranging for and adjudicating his contempt. Although no time pressures or other factors compelled immediate action, although Farr had announced in advance his prospective refusal to answer questions respecting his sources, and although months had elapsed since the conclusion of the *Manson* trial itself, Judge Older initiated the investigation into the alleged violation of

the speech restricting decree, conducted an initial interrogation of the reporter, months later summoned the reporter before him again, and then adjudged him to be in contempt. Thus, for all intents and purposes, Judge Older was the prosecutor, complaining witness and trial judge of petitioner Farr. Such procedure violated the principles enunciated by this Court in *Mayberry v. Pennsylvania,* 400 U.S. 455, and *Johnson v. Mississippi,* 403 U.S. 212. The loss by the public of its right to information respecting the administration of justice, not to mention the loss by petitioner Farr of his rights of freedom of speech and of personal liberty, must not result from such a proceeding.

Conclusion.

The California courts have erected a double standard in free speech cases, one for the legislative and executive branches of government, quite another for the judicial branch of government. The decision below, if permitted to stand, reveals the bankruptcy of the assurances given by the Reardon Committee and the President of the American Bar Association that restrictive orders apply only to lawyers and others within the control of the court and should not concern the press. That proposition was never true, since restrictive orders dry up the source of news; however, the decision below has dramatically exposed that the enforcement of restrictive orders is indeed to involve the press through the technique of interrogation of its representatives, and is to include the imprisonment of reporters.

The judicial branch is one-third of government; and it cannot be that one-third of government in the United States is entitled to afford only grudging and limited respect to First Amendment freedoms. Since this branch

of government has declared itself to be "supreme" in interpreting and applying the Constitution, and has thus declared itself free of the checks and balances which restrain other branches of government, it is imperative that the judiciary itself exercise rigorous vigilance to insure that its own conduct abides by the standards it imposes upon others.

If, as must be so, the *Branzburg* decision was not intended to constitute a blank check to lower courts to impede the legitimate functions of news gathering, then the Farr situation must be characterized by this Court for what it is—a serious case of judicial overreaching in violation of the First and Fourteenth Amendments.

Amici respectfully request that the Petition for Writ of Certiorari be granted.

Respectfully submitted,

EARL KLEIN,
Attorney for Sigma Delta Chi,

ROBERT C. LOBDELL and

Robert S. Warren

ROBERT S. WARREN,
Attorneys for The Times Mirror Company,

EDWARD L. COMPTON,
Attorney for The Hearst Corporation and California Newspaper Publishers Association,

GEORGE R. JOHNSON,
Attorney for Twin Coast Newspapers, Inc.,

STEPHEN REINHARDT,
Attorney for Newspaper Guild, AFL-CIO, CLC.

FILE COPY

OCT 17 1

MICHAEL RODAK, JR

IN THE

Supreme Court of the United States

October Term, 1971

No. 71-1642

WILLIAM T. FARR,
Petitioner,

vs.

SUPERIOR COURT OF LOS ANGELES COUNTY,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL, SECOND JUDICIAL DISTRICT, DIVISION ONE

BRIEF FOR RESPONDENT IN OPPOSITION

JOHN D. MAHARG,
County Counsel
JOHN H. LARSON,
Chief Deputy County Counsel
WILLIAM F. STEWART,
Deputy County Counsel
648 Hall of Administration
Los Angeles, California 90012
Attorneys for Respondent.

WESTERN PRINTING COMPANY, WHITTIER—GLENDALE 8-1752

TOPICAL INDEX

Page

References 1

Questions Presented 1

Statement of the Case 3

Statement of Facts 5

Reasons for Denying the Petition 7

The Larger Problem 7

Argument 10

I. The Superior Court's Inquiry and Subsequent Adjudication of Contempt Is Not an Unconstitutional Abuse of the Court's Power Nor an Harrassment of the Petitioner 10

II. Requiring Testimony of A Reporter Concerning the Source of Information He Received in Violaton of A Court Publicity Order Does Not Abridge First Amendment Rights 13

III. The Order Re Publicity Was Not Void As An Unconstitutional Prior Restraint on First Amendment Rights; the Petitioner Has No Standing to Challenge the Validity of the Order Re Publicity 20

A. The Order Re Publicity Was Constitutionally Valid 20

Page

B. The Petitioner and Amici Have No Standing to Challenge the Validity of the Order Re Publicity ——— 23

IV. Petitioner's Contempt Adjudication Not Invalidated Under the Doctrine of Mayberry v. Pennsylvania, 400 U.S. 455 ——— 25

Conclusion ——— 27

TABLE OF CASES AND AUTHORITIES CITED

Cases

Atlanta Newspapers, Inc. v. State of Georgia (1960) 116 S.E. 2d 588 ——— 15

Branzburg v. Hayes, (1972) 406 U.S. —, 33 L. Ed. 2d 626, 92 S. Ct. ——— 5, 8, 9, 13, 15, 17, 18

Bridges v. Superior Court, 314 U.S. 252 (86 L. Ed. 192) ——— 5, 14, 15

Burns v. Superior Court (1903) 140 Cal. 1 ——— 15

Farr v. Superior Court (1971) 22 Cal. App. 2d 60, 99 C. Rptr. 342 ——— 13

In Re Pappas ——— 5

In Re San Francisco Chronicle (1934) 1 Cal. 2d 630, 634 ——— 15

Mayberry v. Pennsylvania, 400 U.S. 212 ——— 2, 25, 26

Pennekamp v. Florida, 328 U.S. 331, 347, 90 L. Ed. 1295, 1303 ——— 13

Page

People of the State of California v. Charles Manson 3
People v. Watson (1971) 15 C.A. 3d 28, 42 25
Sheppard v. Maxwell, 384 U.S. 333, 16 L. Ed. 2d 600 ..... 2, 4, 7, 8, 9, 13, 14, 15, 20, 28
United States v. Caldwell (1972) 406 U.S. ——, 33 L. Ed. 2d 626, 92 S. Ct. 5
U.S. v. Tijerina (10 Cir. 1969) 412 F. 2d 661 21
Wood v. Georgia (1962) 370 U.S. 375, 8 L. Ed. 2d 569 16

Authorities

Calif. Evid. Code §1070 ..... 4, 6

IN THE

Supreme Court of the United States

October Term, 1971

No. 71-1642

WILLIAM T. FARR,
Petitioner,

vs.

SUPERIOR COURT OF LOS ANGELES COUNTY,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL, SECOND JUDICIAL DISTRICT, DIVISION ONE

BRIEF FOR RESPONDENT IN OPPOSITION

REFERENCES

The respondent's references to the proceedings in the court below are made by citation to Appendixes "A" through "C" to the petition herein.

QUESTIONS PRESENTED

1. Is a former newsman's constitutional right of freedom of speech and press abridged by requiring him to appear before a judge of the Superior Court of the State of California and answer relevant ques-

tions concerning the identity of certain persons he observed violating a court publicity order; can the mandate of the United States Supreme Court in *Sheppard v. Maxwell,* 384 U.S. 333, 16 L. Ed. 2d 600 be negated by protecting under a claim of First Amendment rights a reporter's refusal to reveal observed violators of a publicity order?

2. Is a trial judge under the decision of *Mayberry v. Pennsylvania,* 400 U.S. 212, disqualified from adjudicating the contempt of a witness before him who wilfully refuses to answer relevant questions?

The petitioner has also challenged the constitutionality of the trial court's Order Re Publicity that was issued pursuant to this court's compelling directive in *Sheppard v. Maxwell, supra.* Petitioner claims that such an order, issued in the course of one of the most notorious and widely reported murder trials of recent times and applicable only to attorneys, parties and court attaches, violated the First Amendment to the U.S. Constitution. Respondent respectfully submits that the validity of the court's publicity order is not an appropriate issue before this court as that order was not applicable to the petitioner, nor was it challenged by any of the parties subject to its provisions. Indeed, the petitioner himself did not raise this constitutional issue in the California Court of Appeal.

STATEMENT OF THE CASE

The petitioner by his conduct during the trial of *People v. Manson, et al.,* and his refusal to testify during the court's subsequent inquiry has hurled a deliberate challenge to effective enforcement of this court's mandate in *Sheppard v. Maxwell.* The viability of that mandate will rest on whether the decision of the California Court of Appeal is upheld.

The issues in the instant case arose out of one of the most bizarre and sensational murder cases of recent years—the case of *People of the State of California v. Charles Manson.* The case received intense and broad coverage by the news media from the moment the bodies of actress Sharon Tate and her friends were discovered. The publicity surrounding the case did not abate when Charles Manson and several of his associates were arrested and charged with those murders as well as those of Mr. and Mrs. La Bianca. The intensity of the news coverage increased to such an extent as the pre-trial and trial proceedings began to run their course that the trial of Charles Manson and several members of his "family" became one of the most publicized murder trials in the history of California.

The petitioner seeks a Writ of Certiorari to review a decision of the California Court of Appeal affirming a judgment of contempt against the petitioner for his wilful refusal to answer certain material and relevant questions of the trial court. These questions

sought to elicit the identity of certain persons, admittedly known by the petitioner, who had wilfully violated the court's Order Re Publicity issued in the *Manson* case.

The resolution of the issues in this case will have a direct, immediate and vital effect on the ability of the trial courts of this nation to assure a criminal defendant a fair trial, free from prejudicial newspaper publicity, in compliance with mandate of the U.S. Supreme Court expressed in *Sheppard v. Maxwell,* 384 U.S. 333, 16 L. Ed. 2d 600.

The issues decided by the California Court of Appeals involved not only an interpretation and application of a state newsman's testimonial immunity statute but also the question of whether the petitioner was privileged under the First Amedment of the U.S. Constitution to refuse to answer the questions put to him by the trial court. Most significantly, the case was the first in this county that dealt with the extent to which a reporter could use a state immunity statute as an instrument to interfere with the due administration of justice and to frustrate the inherent authority of trial courts to enforce their orders designed to guarantee criminal defendants a fair trial.

William T. Farr, the petitioner herein, sought to use the California Newsmen's Immunity Statute (Calif. Evid. Code §1070) and the First Amendment of the U.S. Constitution, as a protective umbrella under which to operate in the facilation and encourage-

ment of several flagrant breaches of the trial court's lawful publicity order. The California Court of Appeal correctly determined that under those circumstances the application of a state immunity statute to immunize the petitioner from contempt for refusing to reveal the identity of persons violating the court's order would unconstitutionally interfere with the inherent powers and duties of the court.

That court's decision that the California immunity statute violated the State Constitution is an authoritative determination of that point. The U.S. Supreme Court in *Bridges v. Superior Court,* 314 U.S. 252 [86 L. Ed. 192] previously recognized the finality of a California appellate court's determination of the constitutionality of their state immunity statutes. The only constitutional issue, therefore, properly raised before this court is the question of whether the petitioner's rights under the First Amendment of the U.S. Constitution have been abridged. The respondent submits that this constitutional question was resolved by your Honorable Court in the most recent cases of *Branzburg v. Hayes, In Re Pappas,* and *United States v. Caldwell* (1972) 406 U.S. ..... , 33 L. Ed. 2d 626, 92 S. Ct. .....

STATEMENT OF FACTS

The respondent concurs with Petitioner's Statement of Facts to the extent that they are set forth. His Statement of Facts, however, does not reveal the nature of petitioner's complicity in the several violations of the court's publicity order.

The facts of this case reveal a concerted, knowledgable and deliberate attempt by one member of the news media to obtain and publish information prejudicial to a criminal defendant in a manner that ultimately resulted in flagrant violations of a lawful court publicity order. This activity was coupled with a deliberate attempt by the petitioner to conceal and protect the violators' identity behind an assertion of First Amendment privileges.

Early in the court's inquiry the petitioner admitted by way of a Declaration that he had obtained copies of the transcript of a potential prosecution witnesse's testimony from certain attorneys in exchange for his explicit promise to conceal their identities. In making these promises Farr stated that he relied upon the California Newsman's Immunity Statute, California Evidence Code §1070. (Appendix C., page 169).

Farr did not object to being called as a witness and, indeed voluntarily testified to many facts which exposed for the first time the extent of his participation and, in fact, assistance in the violation of the Court's Order Re Publicity. For instance, he admitted that he had made the initial contact with the parties and had solicited from them copies of the statement of the prosecution witness (Appendix B, pages 124-125). He also admitted that he had promised each of the parties explicitly that he would conceal their identity knowing that at the time he made the promises that they were parties subject to the Court's Order Re Publicity. (Ap-

pendix B, page 122) It was also revealed that he had taken the original transcripts of the witnesse's statement that had been distributed to the attorneys, made copies thereof and returned the originals to the attorneys so that their absence would not be noted. (Appendix B, pages 12d, 148)

As a consequence of his reportorial assignment the petitioner was familiar with the Order Re Publicity and the parties to whom it applied. At the time Mr. Farr wrote the article and at the time that it was published he was aware that the article contained much information that would not be admissible in the trial of the defendants. In fact, the article expressly stated that the testimony of Miss Graham at the current trial of Charles Manson, et al., would not include the matters related in the article (Exhibit "A"). When the copies of the statement were released to the attorneys of record, the admissibility of the statements therein had not been determined by the court.

At no time during the proceedings below did the petitioner claim a privilege under the Fifth Amendment to the United States Constitution.

REASONS FOR DENYING THE PETITION

The Larger Problem

A substantial and disturbing problem existing unresolved since the opinion of this Supreme Court in *Sheppard v. Maxwell,* and posing a substantial threat to effective compliance with the Court's directive in

that case, has at last manifested itself. This is the problem of enforcing valid court publicity orders issued in compliance with *Sheppard* when counsel and members of the press collaborate and the reporter refuses to reveal the identity of the party violating the court order. In such circumstances not only is the violator protected but dissemination of the prejudicial publicity is encouraged and placed beyond the authority of the trial court to curtail. Such potential for abuse cannot be countenanced.

Your Honorable Court in *Sheppard,* in unequivocal terms, mandated the trial courts of this country to take effective action at the outset of a criminal trial to insure the accused a fair hearing untainted by prejudicial newspaper publicity. In language that could not be more express or urgent it was stated that under appropriate circumstances the trial judge should make orders proscribing extrajudicial statements concerning a pending criminal case by lawyers, parties, witnesses, and court officials. Failure to take such protective measures could be construed as effectively denying the accused a fair trial, requiring a reversal of the conviction.

This Court's concern with the prevention of prejudicial extrajudicial statements was again expressed most recently by the majority opinion in *Branzburg v. Hayes,* where at 33 L. Ed. 2d 626, 642, the *Sheppard* case was cited as authority for the issuance of trial court orders proscribing extrajudicial statements

by attorneys, witnesses, and court officials. In addition, the Court commented that where necessary to assure a defendant a fair trial, newsmen "may be prohibited from attending or publishing information about trials."

Although the opinions of this court in *Sheppard v. Maxwell* and *Branzburg v. Hayes* indicate that in appropriate circumstance direct restraints on publication might be imposed upon the press, the constitutional validity of such action has not, as of yet, been directly determined. Thus, once the information has been acquired by the press it remains questionable that publication of that information, no matter how potentially prejudicial to the conduct of a fair trial, could be foreclosed. The crux of the problem is the existence of this hiatus between the court's duty to restrict extra judicial statements by officers of the court and its apparent lack of direct authority over the news media once the prejudicial information is in their possession. How can the court fulfill its duty to provide a fair trial unless effective enforcement of its valid orders governing the conduct of its own officers is assured?

The facts of the instant case portray accurately the gravity of this problem, particularly when counsel and reporters collaborate. If a reporter can claim an immunity from the requirement of all citizens to testify, the courts are rendered powerless to perform the duties required of them by the United States Supreme Court. When the parties enjoined by a trial court's publicity

order can shield themselves from discovery and corrective action by merely giving the extrajudicial statements to members of the news media, the ability of the trial court to protect the accused from the prejudicial effect of such statements is reduced to nothing more than the issuance of impotent admonishments. When a reporter can not only hide behind an alleged reporters "privilege" to the frustration of a court's legitimate and compelling duty but can also rely upon such a "privilege" to obtain the extrajudicial statements in the first instance, the trial court's continuing viability as the protector of a defendant's constitutional right to a fair trial is in serious jeopardy.

ARGUMENT

I

THE SUPERIOR COURT'S INQUIRY AND SUBSEQUENT ADJUDICATION OF CONTEMPT IS NOT AN UNCONSTITUTIONAL ABUSE OF THE COURT'S POWER NOR AN HARASSMENT OF THE PETITIONER.

The respondent Superior Court's judicial inquiry into this matter cannot conceivably be considered harassment. Its actions were compelled if the court was to fulfill its obligations and protect the rights of the parties before it.

The record is clear that the court was solely interested in determining the identity of the violators of the publicity order and did not wish to unnecessarily

interfere with the activities of the press. (Appendix B, Page 31) The court exhausted all reasonable alternative means of obtaining the necessary information before ordering the petitioner to answer the questions. The court summoned all of the attorneys participating in the *Manson* trial and asked each of them if they had given the petitioner the statement of Virginia Graham. All of the attorneys denied giving Mr. Farr the transcript; thus, the initial insult to justice was compounded by the presence of perjury. (Appendix B, Pages 62 & 108)

The court, of course, imposed no direct restrictions on the publication of any article by the petitioner.

The proceedings held in the court's chambers on October 1, 1970 were informal in nature, no one was under oath, and the transcript clearly indicates that the court was primarily concerned with preventing any prejudice to the defendants that might be caused by the publication of the article by Mr. Farr.

The court necessarily had to question Mr. Farr if the identity of the violators were to be ascertained. The court, of course, could not take any action against the parties subject to the order until the violator became known and the reason that they have remained unknown is because Farr has refused to reveal their identity.

The United States Supreme Court has, on numerous occasions, emphasized the necessity of preserving in the trial courts the necessary authority to ef-

fectively carry out their functions as viable members of the tripartite form of U.S. government. The vulnerability of the judicial branch to efforts which impair its ability to preserve constitutional guarantees is revealed constantly but perhaps never more apparently than in this case. The facts of this case clearly indicate the disturbing and serious challenge to the trial court's ability to insulate a criminal defendant from the type of prejudicial publicity so strongly decried by your court. The dilemma of the trial court is self evident. On the one hand it must take effective action at the trial level to restrain extrajudicial statements by counsel and other officials. On the other hand if a reporter may freely operate behind a source privilege, the court is constrained to sit idly by while collaboration between counsel and reporter erode the defendant's right to a fair trial. The recognition of a reporter's source privilege to shield violators of lawful court orders effectively creates an impenetrable conduit through which this prejudicial information may flow unrestricted.

Your honorable Court has indicated that it will not permit this circumstance to prevail unremedied. This Court has, many times, expressed its recognition that the guarantee of a fair trial requires more than mere lip service. Effective enforcement of constitutional guarantees requires effective authority in the trial courts. Thus the Court has stated:

> "We start with the premise that the right of courts to conduct their business in an untrammeled

> way lies at the foundation of our system of government and that courts necessarily must possess the means of punishing for contempt when conduct tends directly to prevent the discharge of their functions." (*Sheppard v. Maxwell, supra* at page 383)

and similarily in the earlier case of *Pennekamp v. Florida,* 328 U.S. 331, 347, 90 L. Ed. 1295, 1303, the Court observed that "Courts must have power to protect the interests of prisoners and litigants before them from unseemly efforts to pervert judicial action."

II

REQUIRING TESTIMONY OF A REPORTER CONCERNING THE SOURCE OF INFORMATION HE RECEIVED IN VIOLATION OF A COURT PUBLICITY ORDER DOES NOT ABRIDGE FIRST AMENDMENT RIGHTS.

The initial question presented to this Court that the petitioner's First Amendment Rights have been abridged was answered by the opinion of the court in *Branzburg v. Hayes* (1972) 406 U.S. ....., 33 L. Ed. 2d 626, 92 S. Ct. .....

The petitioner and amici's interpretation of the California law established by the opinion of the California Court of Appeal, in *Farr v. Superior Court* (1971) 22 Cal. App. 2d 60, 99 C. Rptr. 342, is not only inaccurate but irrelevant to any federal issue on petition for writ of certiorari.

The petitioner and amici construction of the scope of the decision of the Court of Appeal is theirs alone and does not represent a reasoned analysis of the effect of the appellate court's ruling. The court's ruling must be construed only within the narrow facts of this particular case as the opinion of the court expressly stated. The conclusion that California Evidence Code §1070 would be unconstitutional if applied to immunize the petitioner was, in the opinion of the appellate court, compelled because of the mandate of the United States Supreme Court in *Sheppard v. Maxwell,* 384 U.S. 333, 16 L. Ed. 2d 600.

There exists no language in the Court of Appeal's opinion to even suggest that the rule stated therein was applicable to all investigations of an alleged violation of a court order. The Court order in this particular case was issued to protect a criminal defendant's Sixth Amendment rights, a constitutional right of paramount importance in this county and a circumstance that is not present in situations where other testimonial privileges may be asserted.

In any event, a decision of a state appellate court on the constitutionality of a state immunity statute under its own state constitution is not a determination reviewable by the federal Supreme Court. *Bridges v. Superior Court,* 314, U.S. 252, 86 L. Ed. 192.[1]

---

[1]The United States Supreme Court in *Bridges v. Superior Court,* 314 U.S. 252 [86 L.Ed. 1921], reversed the decision of the California Supreme Court, but it was on the ground that the constitutional guarantee of free speech protected the publication of the particular newspaper article that was the basis of the contempt citation. (Bridges had been held in contempt for publishing an article that allegedly attempted to influence the decision of the

Moreover, state contempt immunity statutes have been held unconstitutional by state courts on numerous occasions. *In Re San Francisco Chronicle* (1934) 1 Cal. 2d 630, 634; 36 P. 2d 369; *Bridges v. Superior Court* (1939) 14 Cal. 2d 464, 479; 94 P. 2d 983; *Burns v. Superior Court* (1903) 140 Cal. 1; 73 P. 597; *Atlanta Newspapers, Inc. v. State of Georgia* (1960) 116 SE 2d 588.

The claim made by newsmen in recent years to a constitutional privilege not to be compelled to reveal sources of information was finally resolved by this Court in *Branzburg v. Hayes, supra,* wherein this Court held that a reporter's freedom of speech and press was not abridged by requiring him to appear and testify before a grand jury. The *Branzburg* opinion is determinative of this issue before the Court. Respondent urges, however, that even if the opinion of the Court in *Branzburg* had been otherwise, to compel the petitioner herein to testify under the particular circumstances of the instant case and this Court's opinion in *Sheppard v. Maxwell,* does not constitute an abridgement of his First Amendment rights.

In *Branzburg* the reporter was held to be required to appear and testify before a grand jury, the Court being of the opinion that the overwhelming interest of the public in the investigation of crimes by grand juries

---

court.) The principle that the legislature cannot infringe upon the inherent power of the courts to punish for contempts was not affected. The Supreme Court noted at page 261 of their opinion,

> "California Supreme Court's decision that the statute is invalid is an authoritative determination of that point."

outweighed any indirect, consequential and uncertain burden on newsgathering activities. In the instant case the reporter's testimony was sought in a court of law and only after it had been clearly established (by the reporter's own statements) that he knew the identity of the attorneys violating the court's publicity order. In addition, this case was directly concerned with the protection of another constitutional amendment of great importance in a free society, —the Sixth Amendment which guarantees a criminal defendant a fair trial before an impartial jury. The concurrent accommodation and protection of Sixth Amendment rights was not a factor in the *Branzburg, Pappas and Caldwell* cases.

The distinction, for First Amendment analysis, between a grand jury proceeding and a criminal trial was previously noted by this Court when in *Wood v. Georgia* (1962) 370 U.S. 375, 8 L. Ed. 2d 569, the majority observed:

> "First, it is important to emphasize that the case does not represent a situation where an individual is on trial; there was no 'judicial proceeding pending,' in a sense that prejudice might result to one litigant or the other by ill considered conduct aimed at influencing the outcome of a trial or a grand jury proceeding . . . *and of course the limitations on free speech assume a different proportion when expression is directed toward a trial as compared to a grand jury investigation.*" (Emphasis added) *Wood v. Georgia,* 8 L. Ed. 2d at page 580

The majority opinion in *Branzburg* emphasized that grand jury proceedings were constitutionally mandated and had formed for centuries an indispensible part of our judicial system. Not to be overlooked, therefore, in the instant case, is a mandate of equal importance and significance. This is the mandate of this Court that it is the trial court's duty to provide a forum where a criminal defendant could obtain a fair trial, free from prejudicial out-of-court statements and that to fulfill that duty the court could and should issue appropriate publicity orders. Thus, an even more compelling reason for requiring the petitioner's testimony is present herein.

The danger to the administration of justice that recognition of a newsman's privilege would entail was commented upon in the majority opinion in *Branzburg*. All those potential evils are present in the case at bar plus the very real threat to Sixth Amendment rights. Factually and legally there exists no valid reason why the rule stated in *Branzburg* should not obtain in this case.

The petitioner collaborated with and, of course, observed each of the attorneys acting in violation of the court order. The following comment of this court in *Branzburg,* 33 L. Ed. 2d, at page 646, is therefore particularly in point.

> "Thus, we cannot seriously entertain the motion that the First Amendment protects a newsman's agreement to conceal the criminal conduct of his source, or evidence thereof, on the theory

that it is better to write about crime than to do something about it. Insofar as any reporter in these cases undertook not to reveal or testify about the crime he witnessed, his claim of privilege under the First Amendment presents no substantial question. The crimes of news sources are no less reprehensible and threatening to the public interest when witnessed by a reporter than when they are not."

It is likewise significant to note that this case does not involve any possible invasion of the expression of political and idealogical beliefs. The scope of inquiry in the proceedings below were much more narrow and relevant than was the situation in *Branzburg, Pappas* and *Caldwell*. The petitioner's own admissions established that the violators of the publicity order were all within a small defined group of individuals. Moreover, unlike the reporters in *Caldwell* and *Pappas*, the petitioner herein did not object on constitutional grounds to the court's summoning him to testify and, indeed, furnished without objection much information that clearly indicated the propriety of further inquiry by the court.

It should not be overlooked that even when the standards articulated by Mr. Justice Stewart in his dissent in *Branzburg* are applied to the facts herein, the action of the respondent court did not constitute an unconstitutional impingement of First Amendment rights. The information sought was clearly relevant to a precisely defined subject of judicial inquiry, could not have been obtained by alternative means, and cer-

tainly the protection of Sixth Amendment rights and effective compliance with a constitutional mandate of the United States Supreme Court is a matter of grave national concern.

Under the narrow ruling of the California Court of Appeal herein no long-range crippling effect on legitimate news-gathering activities can reasonably be perceived. Newsmen are quick to point out that the public benefits from the recognition of newsmen-informant privileges because they serve to encourage and facilitate the dissemination of news. The type of news, it is claimed, that is necessary for the maintenance of a well-informed society. One cannot doubt the merit of these observations when applied to the appropriate fact situation, but when considered within the context of the predominant issues of this case that argument clearly strays from the path of logic. Their argument in this regard, however, serves to emphasize the justification for the issuance and enforcement of publicity orders because these orders are designed to protect a criminal defendant's Sixth Amendment rights by temporarily curtailing the dissemination of certain types of information. *If the recognition of a privilege in this case will serve to expedite the dissemination of information the Order Re Publicity was intended to curtail, how can it then be seriously argued that the mandate of the Supreme Court is not being frustrated. Your honorable Court has declared that the Sixth Amendment requires that prejudicial publicity be restricted, not encouraged. No valid public purpose is*

promoted by broadcasting, while the trial is in progress, the type of information that was related in the petitioner's newspaper article.

III

THE ORDER RE PUBLICITY WAS NOT VOID AS AN UNCONSTITUTIONAL PRIOR RESTRAINT ON FIRST AMENDMENT RIGHTS; THE PETITIONER HAS NO STANDING TO CHALLENGE THE VALIDITY OF THE ORDER RE PUBLICITY.

A. The Order Re Publicity Was Constitutionally Valid.

Just as the recent opinion of this Court in *Branzburg* resolves the issue of a newsman's source privilege, the opinion of the court in *Sheppard v. Maxwell,* 384 U.S. 333, 16 L. Ed. 2d 600, disposes of petitioner's contention that the respondent's publicity order was void as a prior restraint on freedom of speech. It is interesting to observe, that although the opinion in *Sheppard* is the most significant expression by this Court pertaining to a trial court's obligation to protect the right to a fair trial by controlling extrajudicial statements by officers of the court, the petitioner and amici choose to completely ignore its existence. The Supreme Court's directive in *Sheppard,* however, was not ignored by the respondent court and it is hoped, is not being ignored by the other criminal courts of this nation.

Since the mandate of the Supreme Court in *Sheppard,* the constitutionality of publicity orders similar to the one issued in the *Manson* case have been upheld many times by state and federal courts. It has also been established, contrary to the assertions of the petitioner that the clear and present danger test does not apply to publicity orders intended to limit extrajudicial statements by counsel and other officers of the court. Recently, in *U.S. v. Tijerina* (10 Cir. 1969) 412 F. 2d 661, cert. den. 396 U.S. 990, 24 L. Ed. 2d 412, the court held that such an order would be justified if there existed a "reasonable likelihood" that prejudicial news would tend to prevent a fair trial.

The court in *Tijerina* distinguished the *Bridges, Pennekamp, Craig* and *Wood* cases with the observation that none of them involved a contempt arising from the violation of a publicity order.

In any event, the pretrial publicity, (which included newspaper publication of a confession by defendant Susan Atkins that implicated all of the defendants), the brutal nature of the crimes, and the intense coverage by the press of the defendants and in the life style of the "family," created a climate in the *Manson* case that made it manifest that extrajudicial statements could present a clear and present danger to the administration of justice.

Rather than discuss or even cite *Sheppard v. Maxwell,* the petitioner quotes general constitutional principles that found their expression in cases totally dif-

ferent from the instant case and without any effort to relate them to the facts and to the dominant problem at bar—the balancing of a defendant's right to a fair trial guaranteed by the Sixth Amendment with the freedom of speech guarantees of the First Amendment. In balancing these interests of equal constitutional dignity the Supreme Court has always made sure that the balance was not struck against right to a fair trial, even when some restriction on speech activities would result. The cases cited by petitioner, *Bridges v. Superior Court, Pennekamp v. Florida, Craig v. Harney* and *Wood v. Georgia,* were all decided prior to *Sheppard v. Maxwell,* were not concerned with Sixth Amendment rights, and have all been distinguished by subsequent cases dealing with the problem of protecting by publicity orders the constitutional guarantee of a fair trial. In retrospect, it can now be seen that Mr. Justice Harlan's dissent in *Wood v. Georgia* and the comment in the majority opinion of that case that limitations on free speech assume a different proportion when a criminal trial is involved, furnished a clear indication of the rule ultimately to be fashioned by the Court in *Sheppard.*

The sequestration of the jury in no way affected the validity of the original Order Re Publicity. The opinion of the Supreme Court in *Sheppard implied* that the trial judge could, and indeed should, take cumulative measures if necessary to restrict the dissemination of prejudicial out of court statements. There was no suggestion in *Sheppard* that sequestration of

the jury would deprive the court of authority to take additional measures if the circumstances of the case would warrant it.

It is obvious that the more sensational and widely reported a criminal trial is, the more affirmative action the trial judge must take. Sequestration of the jury may in some cases be less than totally effective since there really cannot exist complete sequestration unless the jurors are made virtual prisoners in the courthouse. The *Manson* case itself illustrates that sequestration is not infallible. It is a matter of record in that case, of which the court may take judicial notice, that on numerous occasions during the trial it was necessary for the court to order blacked out the windows of the bus transporting the jurors from the courthouse to their hotel so that the jurors would not have the opportunity to observe the newspaper headlines commenting on the trial. In spite of such precautions, during the course of the trial a newspaper headline proclaiming President Nixon's comments on the case was exposed to the jury.

B. The Petitioner and Amici Have No Standing to Challenge the Validity of the Order Re Publicity.

The Order Re Publicity did not apply to the petitioner or to the news media in general—the order sought to regulate the extrajudicial statements of counsel, witnesses, court attaches and other persons under the direct control of the court. The news media could and did publish any article about the proceedings they

desired, no matter how potentially prejudicial it might be to the defendants.[2] Neither the defendants in the *Manson* case nor their attorneys challenged the order. Indeed, they appear to have welcomed the order as well as the sequestration of the jury.[3]

The petitioner made no claim that the order was constitutionally void at the hearings before Judge Older on June 3 or July 19, 1971, and none of the attorneys summoned to testify at the hearing on June 30 raised any issue as to its validity. The petitioner stipulated without qualification that the Order Re Publicity could be introduced into evidence in the hearing. (Appendix B, page 20).

Moreover, Farr in his petition for Writ of Review in the California Court of Appeal failed to contest the validity of the order. As neither the parties subject to the order, nor the petitioner himself, have previously questioned its legality, the petitioner and his amici are now making an improper collateral attack upon the validity of that order. Failure of a defendant *personally subject to a publicity order* to object to that order at the trial level has been held to

---

[2]The trial court recognized that its publicity order did not bind the press. Judge Older as a concerned judicial officer, requested that Mr. Farr's newspaper voluntarily refrain from publishing the article relating the statements of Virginia Graham because of the prejudicial effect that it might have on the trial (R.T. 13,316 and 13,361, *People of the State of California v. Manson, et al* No. A253156). The article was nevertheless published the next day on the front page of the Herald-Examiner.

[3]During the *Manson* trial attorneys for some of the defendants made several motions requesting the interrogation of the jury for the purpose of ascertaining if they had been exposed to any prejudicial information in violation of the publicity order. Several of the attorneys also expressed alarm at the possible prejudice that might enure to their clients by the publication of the article by Farr, even to the extent of requesting that the court issue an order enjoining the Herald-Examiner from publishing the story (R.T. 13360 to 13373. *People of the State of California v. Manson, et al.* No. A253156).

preclude his challenging the validity of that order on appeal. (*People v. Watson* (1971) 15 C. A. 3rd 28, 42; 92 Cal. Rptr. 860.

The order is constitutionally valid on its face and the petitioner and his amici have no standing to now claim that it is void.

IV

PETITIONER'S CONTEMPT ADJUDICATION NOT INVALIDATED UNDER THE DOCTRINE OF *MAYBERRY v. PENNSYLVANIA*, 400 U.S. 455.

The argument that it was error for Judge Older to conduct the hearing is, in the opinion of the respondent, so devoid of merit as to require but summary comment.

The petitioner himself did not raise any objection to Judge Older presiding at the inquiry, either at the time of hearing or before the Court of Appeal. In fact, his counsel affirmatively stated that there would be no challenge to Judge Older (Appendix B, page 29). Only the amici raised the argument that Judge Older was disqualified, and then, only on appeal. The amici, of course, do not possess the same standing in the proceedings as the petitioner himself. If the petitioner has waived any objection that was required to be made at the trial level, the amici cannot resurrect this right on appeal.

The cases cited by the amici on this point are easily distinguishable on their facts. They all apply to be-

havioral offenses of a disruptive nature or acts constituting a vicious, slanderous, or personal vilification of the trial judge, occurring in his immediate presence. Also, in both cases there was an objection to the trial judge sitting, made by each defendant prior to the adjudication of contempt.

Even where the defendant's behaviour can be interpreted as an attack on trial judge it is not in every case that the judge is disqualified. As the Court observed in *Mayberry* at 400 U.S. 465, the attacks must be of a nature that they carry such potential for bias as to, in the interest of fairness, require the hearing be held before a disinterested judge. There is no indication in the opinions of *Mayberry v. Pennsylvania* and *Johnson v. Mississippi* that a court before whom a witness refuses to answer a proper question is there-upon disqualified from holding that person in contempt.

Judge Older during the hearings gave each party full and fair opportunity to argue their respective positions. The Judge gave Farr a complete warning after each refusal and afforded him another opportunity to answer the question. The petitioner's contempt in this case consists solely of his refusal to answer proper, relevant questions when ordered to do so by the court. Referral of the matter to another judge could in no way affect the adjudication of contempt. A wilful refusal to testify constitutes a contempt in any court.

Farr himself, of course, was not on trial. Farr was summoned before court solely as a witness. No con-

tempt action was initiated or contemplated until Farr refused to answer the questions.

The protestations in both petitioner and amici briefs that Judge Older was in effect the prosecutor, complaining witness and trial judge of Farr is meaningless rhetoric. Judge Older was not a witness nor a prosecutor, nor was Farr on trial for violating the court's Publicity Order. Except for petitioner's claim of constitutional privilege, the circumstances herein were no different than in any other case where a witness refuses to answer questions. As the California Court of Appeal so correctly observed, the trial court has an obligation to initiate investigations into alleged violations of its orders. The publicity order was not issued by Judge Older in the first instance, but if it had been, due process did not require that he abdicate to another judge his obligation to investigate violations of that order.

CONCLUSION

The opinion of the California Court of Appeal does not indicate any insensitivity to freedom of press. Rather, it indicates a sensitivity and awareness of the paramount and compelling obligation of the trial court to preserve the criminal defendant's right to a fair trial. There exists absolutely no evidence of judicial overreaching or harassment. Indeed, judicial inaction would have been a regrettable disregard of constitutional responsibilities.

Although the assertions of amici that the petitioner acted throughout as an ethical reporter are clearly contrary to the established facts, the trial court's action did not seek to punish the petitioner. The trial court, of course, was disturbed that three attorneys would flagrantly violate the court's publicity order, but at all times the identity of those individuals was the single goal of its inquiry. It is not the rules of evidence or the issuance of orders in the abstract that are of concern to our courts but the application in principle and in fact of the constitutional guarantee of a fair trial. The guarantee of a fair criminal trial is as much the cornerstone of a free and democratic society as is the guarantee of freedom of speech and press. Such a society requires the vigorous enforcement of both rights and the logical and well-considered reconciliation of these rights when they come into apparent conflict.

Your honorable Court might well have had the circumstances of the instant case in mind when the following comment was made, "Neither prosecutors, counsel for defense, the accused, witness, court staff, nor enforcement officers coming under the jurisdiction of the court should be permitted to frustrate its function. Collaboration between counsel and the press as to information affecting the fairness of a criminal trial is not only subject to regulation, but is highly censurable and worthy of disciplinary measures." (*Sheppard v. Maxwell,* 384 U.S. 333, 16 L. E. 2d 600 at page 620)

To adopt the position urged by the petitioner and the amici would be to open the door to potential abuses

so obvious that they need no recitation here. This case provides the example. The opinion of the Court of Appeal, limited as it is to the compelling facts of the instant case, cannot be said to constitute an impermissible interference with legitimate news gathering activities.

The respondent respectfully requests that petition for writ of certiorari be denied.

Respectfully submitted,

JOHN D. MAHARG,
County Counsel

JOHN H. LARSON,
Chief Deputy County Counsel

WILLIAM F. STEWART,
Deputy County Counsel